

***United States Court of Appeals
for the Second Circuit***

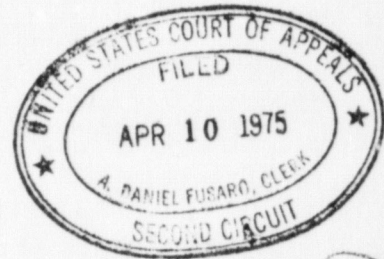


APPENDIX

15-1028

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-7028



FRANCIS X. CALO

Plaintiff-Appellant

vs.

R. MORRIS PAINE, et al
Defendants-Appellees

:

:

:

:

On Appeal from the United
States District Court for
the District of Connecticut

APRIL 4, 1975

B

P/S

APPENDIX TO THE RECORD

Raphael L. Podolsky
Attorney for the Plaintiff
Waterbury Legal Aid
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Waterbury, Connecticut 06702

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1. Preliminary Statement

1. The plaintiff in this action is the former Executive Director of the Parking Authority of the City of Waterbury. He was fired from his position by the defendants after approximately four months of his six-month probationary period had elapsed, without being afforded advance notice of the charges against him, without an opportunity to confront adverse witnesses or otherwise refute the charges, and without a hearing containing the minimal elements of due process. The nature of the charges made and the publicity that they have generated have damaged his reputation in the community and have interfered with his ability to obtain future employment. The defendants' failure to provide the plaintiff with the rudiments of due process, acting under color of state law, constitutes a deprivation of both property and liberty without due process of law, in violation of the Fourteenth Amendment and 42 U.S.C. 1983. In addition, the defendants were in fact motivated, not by the plaintiff's inability or unwillingness to handle the responsibilities of his position, but by a desire to retaliate against him for his prior political and public service activities, and particularly for his candidacy in September, 1973, in a Democratic primary in opposition to a slate headed by one of the defendants. Furthermore, the conduct of the defendants, in acting together to accomplish their purpose of dismissing the plaintiff for improper reasons and without due process of law, constitutes a conspiracy to deprive the plaintiff of his rights protected by 42 U.S.C. 1983.

II. JURISDICTION

2. This action for declaratory and injunctive relief, back pay, and compensatory and punitive damages is authorized by 42 U.S.C. 1983, for the purpose of redressing the deprivation of rights, privileges, and immunities secured to the plaintiff by the due process clause of the Fourteenth Amendment to the United States Constitution.

3. Jurisdiction is conferred on this Court by 28 U.S.C. 1343(3), 28 U.S.C. 1343(4), and 28 U.S.C. 1331.

4. Power to grant the injunctive and declaratory relief sought by the plaintiff is conferred by 28 U.S.C. 2201, 28 U.S.C. 2202, 28 U.S.C. 1343, and Rule 57 of the Federal Rules of Civil Procedure.

III. PARTIES

5. The plaintiff, FRANCIS X. CALO, is a resident of the State of Connecticut and a citizen of the State of Connecticut and of the United States. He was, until July 19, 1974, the Executive Director of the Waterbury Parking Authority at an annual salary of \$12,605.

6. The defendant, R. MORRIS PAINE, resides at 42 Lee St., Waterbury, Connecticut. He is the chairman of the Waterbury Parking Authority.

7. The defendant, WILLIAM BARTON, resides at 99 Fairwood Avenue, Waterbury, Connecticut. He is a member of the Waterbury Parking Authority.

8. The defendant, RAYMOND GIANNAMORE, resides at 83 Harwood Rd., Waterbury, Connecticut. He is a member of the Waterbury Parking Authority.

9. The defendant, JAMES JANNITTO, resides at 237 Willow St., Waterbury, Connecticut. He is a member of the Waterbury Parking Authority.

10. The defendant, JOSEPH D. UBALDI, resides at 94 Clough Rd., Waterbury, Connecticut. He is a member of the Waterbury Parking Authority.

11. The defendant, ALBERT E. PROVOST, resides at 5 Coach Drive, Waterbury, Connecticut. He is the Acting Director of Personnel of the Civil Service Commission of the City of Waterbury.

12. The defendant, JAMES B. GRIFFIN, resides at 129 Irvington Avenue, Waterbury, Connecticut. He is the chairman of the Civil Service Commission of the City of Waterbury.

13. The defendant, LOUIS MASTERS, resides at 151 Bateswood Road, Waterbury, Connecticut. He is a member of the Civil Service Commission of the City of Waterbury.

14. The defendant, RICHARD BRUNO, resides at 67 Newfield Avenue, Waterbury, Connecticut. He is a member of the Civil Service Commission of the City of Waterbury.

15. The defendant, MURRAY WEISS, resides at 360 Country Club Road, Waterbury, Connecticut. He is a member of the Civil Service Commission of the City of Waterbury.

16. The defendant, WILLIAM J. SULLIVAN, resides at 36 Pineridge Road, Waterbury, Connecticut. He is a member of the Civil Service Commission of the City of Waterbury.

17. The defendant, VICTOR MAMBRUNO, resides at 116 Woodside Avenue, Waterbury, Connecticut. He is the Mayor of the City of Waterbury.

IV. FACTUAL ALLEGATIONS

18. On or about October 15, 1973, the plaintiff took Civil Service Examination No. 435, given by the Civil Service Commission of the City of Waterbury for the position of Executive Director of the Waterbury Parking Authority.

19. On or about March 6, 1974, the name of the plaintiff was certified to the Waterbury Parking Authority by the defendant, ALBERT E. PROVOST, Acting Director of Personnel of the Civil Service Commission of the City of Waterbury, as the highest ranking name on the list of eligibles for that position, and on or about March 11, 1974, the plaintiff commenced employment in that position.

20. Pursuant to Connecticut law and the Civil Service Rules and Regulations of the City of Waterbury, and in accordance with the understanding of all the parties to this action, the first six months of said appointment are served in probationary status.

21. On July 2, 1974, the defendants R. MORRIS PAINE, WILLIAM A. BARTON, and RAYMOND GIANNAMORE, individually and in their capacity as members of the Waterbury Parking Authority, met together, decided to dismiss the plaintiff from his position as Executive Director, and orally informed the

plaintiff of their intention to do so.

22. On July 5, 1974, the defendants, R. MORRIS PAINE, WILLIAM A. BARTON, RAYMOND GIANNAMORE, JAMES JANNITTO, and JOSEPH D. UBALDI, individually and in their capacity as members of the Waterbury Parking Authority, recommended that the plaintiff be dismissed from his position as Executive Director of the Waterbury Parking Authority, said dismissal to take immediate effect.

23. At no time prior to the meeting on July 5, 1974, was the plaintiff given by the defendant members of the Waterbury Parking Authority any written notice of either the general or the specific nature of the charges against him or the basis for his dismissal, nor was he given any opportunity to confront witnesses or otherwise refute any charges.

24. The plaintiff was present at the meeting on July 5, 1974, and, at his insistence, a letter, signed by the defendant, R. MORRIS PAINE, and purportedly stating the charges against the plaintiff, was read into the record. A copy of that letter is attached to this complaint as Exhibit A.

25. The plaintiff did not receive a copy of this letter until some time after the above meeting. Said letter contains numerous serious allegations against the plaintiff, including charges of lack of tact, abrasive personality, lack of respect and consideration for others, the making of statements and taking of action without adequate knowledge of the facts, and the causing of deterioration of employee relations.

26. No evidence in support of the charges in this letter was presented at the July 5 meeting, nor has any been presented to the plaintiff since then. The letter contains no factual statements and no specifics beyond the general conclusionary statements within it.

27. At no time since July 5, 1974, has the plaintiff been permitted by the Waterbury Parking Authority or by the defendant members of the Waterbury Parking Authority to confront any witnesses upon whose statements the charges in the letter were based, to learn the names of those witnesses, or to learn the dates upon which the alleged misconduct occurred.

28. At the July 5 meeting, and at all times thereafter, the plaintiff has denied the charges made against him. The plaintiff believes that at all times he discharged his duties faithfully and in accordance with the obligations of the position he held.

29. At the July 5 meeting, and on numerous occasions thereafter, the plaintiff has asked that the charges against him be made specific and that he be allowed a hearing in which to confront his accusers and prove his innocence of the charges.

30. On July 5, 1974, the defendant, ALBERT E. PROVOST, individually and in his official capacity, ratified the recommendation made at the July 5 meeting by the defendant members of the Waterbury Parking Authority. The letter of recommendation, with his endorsement thereon, is attached as Exhibit B.

31. Upon ratification by the defendant, ALBERT E. PROVOST, the plaintiff was dismissed from his position immediately, subject to his right to receive his pay through July 19, 1974.

32. The plaintiff reported to work every work day from July 6, 1974, through July 19, 1974, but he was permitted to perform no duties as Executive Director of the Waterbury Parking Authority after July 5, 1974, and he has received no compensation for any period of time subsequent to July 19, 1974.

33. On July 5, 1974, the plaintiff requested a meeting with the Civil Service Commission of the City of Waterbury and its defendant members to discuss his dismissal and the charges against him. On July 18, 1974, the plaintiff further requested that the Civil Service Commission and its defendant members revoke the ratification of his dismissal made by the defendant, ALBERT E. PROVOST.

34. On July 22, 1974, the defendants JAMES B. GRIFFIN, LOUIS MASTERS, RICHARD BRUNO, MURRAY WEISS, and WILLIAM J. SULLIVAN, individually and in their capacity as members of the Civil Service Commission of the City of Waterbury, met together and refused to grant the plaintiff a hearing before the Civil Service Commission, and no such hearing has ever been held.

35. At no time, either before, on, or after July 5, 1974, has the defendant, ALBERT E. PROVOST, the Civil Service Commission of the City of Waterbury, or the defendant members of the Civil Service Commission of the City of Waterbury provided the plaintiff with notice of the specific charges against him, an opportunity to confront witnesses against him and to refute the charges, or a hearing of any sort.

36. The defendant, VICTOR MAMBRUNO, individually and in his official capacity, consulted with, counselled, and advised other of the defendants as to whether the plaintiff should be retained

in his position as Executive Director of the Waterbury Parking Authority or given a hearing after he was dismissed, and his desires and recommendations were considered when said decisions were made.

37. The defendant, VICTOR MAMBRUNO, individually and in his official capacity, has participated with other of the defendants in the discussions and decision-making process that led to the decision to dismiss the plaintiff from his position without notice or hearing and is one of those in fact responsible for the making of that decision.

38 Since July 19, 1974, the plaintiff has been unemployed.

39 The defendants have brought about the dismissal of the plaintiff for reasons other than those stated in the letter of July 5, 1974.

40 In September, 1973, the plaintiff ran for the position of Comptroller of the City of Waterbury in the Democratic primary as a member of a slate of candidates headed by William J. Verriker, who was a candidate for mayor.

41 The opposing ticket in that primary election was headed by the defendant, VICTOR MAMBRUNO, who was at that time the mayor of the City of Waterbury.

42 The Mambruno slate was victorious in the Democratic primary and in the subsequent election for mayor.

43 The defendants, R. MORRIS PAINE, RAYMOND GIANNAMORE, WILLIAM BARTON, and ALBERT E. PROVOST, are all closely associated personally and politically, with the defendant, VICTOR MAMBRUNO, and have acted to carry out his wishes.

44. The plaintiff has, since February, 1970, been a member of the Board of Tax Review of the City of Waterbury, a non-elective public position, pursuant to which he, sitting with two other members of said Board, hears appeals from property tax assessments.

45. On occasion, and particularly in October, 1973, the plaintiff, in his capacity as a member of the Board of Tax Review and while pursuing his public duties, has taken positions unfavorable to those desired by the defendant, VICTOR MAMBRUNO, and upon which that defendant, through his agents, had made his wishes known.

46. In late December, 1973, when the plaintiff became the highest-ranked candidate on the list of eligibles for the position of Executive Director of the Waterbury Parking Authority, the defendants, and particularly ALBERT E. PROVOST, R. MORRIS PAINE, and VICTOR MAMBRUNO, deliberately and unnecessarily, through dilatory conduct, delayed his certification for that position.

47. During his service as Executive Director of the Waterbury Parking Authority, he has attempted to make decisions, while pursuing his public duties, which conflicted with the desires of subordinate employees of the Waterbury Parking Authority, who are associates of the defendants, R. MORRIS PAINE and VICTOR MAMBRUNO.

48. The plaintiff was dismissed from his position as Executive Director of the Waterbury Parking Authority by the defendants in retaliation and as a penalty for the plaintiff's exercise of his First Amendment and other rights to run for public office and to hold and carry out the duties of positions

of public responsibility.

49. At all times the defendants herein named have acted under color of state and city laws, ordinances, regulations, customs, and usages.

50. The individual defendants herein named have engaged in a common enterprise and conspiracy for the purpose of depriving the plaintiff, without due process of law, of his position as Executive Director of the Waterbury Parking Authority.

51. The defendants herein named have acted deliberately, willfully, and for the intended purpose of depriving the plaintiff of his position without due process of law.

52. The dismissal of the plaintiff from his position was a matter of much public interest in the Waterbury area and received substantial coverage in the Waterbury Republican and the Waterbury American, the two major newspapers that serve the Waterbury metropolitan area, including an editorial on the subject of his dismissal. Copies of fourteen newspaper articles which appeared in those newspapers between June 28, 1974 and July 24, 1974 are attached as Exhibits through P.

53. Said newspaper articles included repetitions of the charges made against the plaintiff in the July 5 letter signed by the defendant, R. MORRIS PAINE, including charges of lack of tact, abrasive personality, lack of respect and consideration for others, the making of statements and taking of action without adequate knowledge of the facts, and the causing of deterioration of employee relations (see Exhibits E, F, J, K, L, and M).

54. It is the belief of the plaintiff that the defendants have placed the letters of July 5, 1974, in his personnel file and that those letters will remain a permanent part of his

personnel file at City of Waterbury.

55. As a result of the conduct of the defendants and the attendant publicity, the good name, reputation, and honor of the plaintiff has been destroyed or seriously damaged.

56. As a result of the conduct of the defendants and the attendant publicity, the ability of the plaintiff to obtain future employment in similar executive positions has been destroyed or seriously damaged.

57. As a result of the conduct of the defendants and the attendant publicity, the ability of the plaintiff to obtain future positions of public service, both elective and appointive, has been destroyed or seriously damaged.

V. FIRST CAUSE OF ACTION

58. The conduct of the defendants, acting under color of law, in subjecting the plaintiff to the destruction of his good name, reputation, and honor, and in seriously damaging his ability to obtain future employment in similar executive positions and in positions of public service, all without providing the plaintiff with notice of the charges, hearing, confrontation, and an opportunity to defend, constitutes a deprivation of the plaintiff's liberties without due process of law, contrary to the Fourteenth Amendment to the United States Constitution and to 42 U.S.C. 1983.

VI. SECOND CAUSE OF ACTION

59. Under Connecticut law, and particularly C.G.S. 7-417 and C.G.S. 7-419, and under the Civil Service Rules and Regulations

of the City of Waterbury, particularly Chapter IX, a probationary employee of an agency may be dismissed by the appointing authority at the end of his probationary period without cause, but he may not be dismissed during his probationary period except by "a department head with the approval of the Director of Personnel: and only with cause, i.e., only if he is "unable or unwilling to perform the duties of the position satisfactorily" or if "his habits and lack of dependability do not merit his continuance with the service."

⑥. Said state law and Civil Service rules and regulations create a legitimate claim of entitlement and a legitimate expectancy that a probationary employee, and especially the probationary head of a department, will not be dismissed prior to the termination of his probationary period, unless his conduct is such as to bring him within the dismissal provisions of state law and Civil Service rules.

⑦. Said state law and Civil Service rules and regulations give the plaintiff a property interest in the retention of his position, at least until the end of his probationary period.

⑧. The plaintiff was dismissed during his probationary period, and not at the end of it.

⑨. The conduct of the defendants, acting under color of law, in dismissing the plaintiff without notice of the charges, hearing, confrontation, or an opportunity to defend constitutes a deprivation of the plaintiff's property without due process of law contrary to the Fourteenth Amendment to the United States Constitution and to 42 U.S.C.1983.

VII. THIRD CAUSE OF ACTION

64. The conduct of the defendants, acting under color of law, in dismissing the plaintiff in retaliation for the exercise of his First Amendment and other rights to run for public office and to hold and carry out the duties of positions of public responsibility, as protected by the Fourteenth Amendment, constitutes a deprivation of the plaintiff's liberty and property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution and to 42 U.S.C. 1983.

VIII. FOURTH CAUSE OF ACTION

65. The conduct of the defendants, acting under color of law, in conspiring together to dismiss the plaintiff from his position as Executive Director of the Waterbury Parking Authority without notice of the charges against him, hearing, confrontation, and an opportunity to defend, and in retaliation for the exercise of his First Amendment rights, as protected by the Fourteenth Amendment, constitutes a conspiracy to deprive the plaintiff of his liberty and property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, and to 42 U.S.C. 1983.

WHEREFORE, the plaintiff prays that this Court:

- 1) Assume jurisdiction of this case;
- 2) Permit the plaintiff to file and prosecute this action in forma pauperis;
- 3) Issue temporary and permanent injunctions reinstating the plaintiff in his position as executive

director of the Waterbury Parking Authority and enjoining the defendants from dismissing the plaintiff from that position, except by due process of law;

4) Enter a final judgment declaratory of the right of the plaintiff to be dismissed from his position only by due process of law;

5) Grant the plaintiff back pay from July 19, 1974;

6) Grant the plaintiff compensatory damages in the amount of \$75,000.00.

7) Grant the plaintiff punitive damages in the amount of \$25,000.00;

8) Tax the costs of this action against the defendants;

9) Grant such other and further relief as may be just and proper to the plaintiff.

PLAINTIFF

By

Raphael L. Podolsky
His Attorney
61 Field Street
Waterbury, Connecticut 06702
756-8074

PLAINTIFF'S VERIFICATION OF COMPLAINT

Plaintiff, FRANCIS X. CALO, being first duly sworn, deposes and says that he has read the foregoing complaint hereto attached and finds it to be true to the best of his knowledge and belief.

Francis X. Calo

Francis X. Calo

STATE OF CONNECTICUT)
COUNTY OF NEW HAVEN) ss: Waterbury

Duly sworn and subscribed to before me this 31st day of
August 1974.

Raphael L. Podolsky

Raphael L. Podolsky
Commissioner of the Superior Court



WATERBURY PARKING AUTHORITY
THE CITY OF WATERBURY
CONNECTICUT

July 5, 1974

Director of Personnel
City of Waterbury
Waterbury, Connecticut

Mr. Francis X. Calo
25 Morris Street
Waterbury, Connecticut

Dear Sir:

In accordance with Chapter IX, Section 5 (a) of the Civil Service Rules and Regulations, the Waterbury Parking Authority having received approval from the Director of Personnel for the removal of Francis X. Calo from the position of Executive Director of the Parking Authority hereby advises the reasons for that removal.

Subsequent to his certifications for said position and prior to his acceptance of it, members of the Parking Authority met with Mr. Calo and outlined the job requirements stressing the following points:

The operation of the Parking Authority has been very successful and the guidelines set up for its operation require no immediate changes.

In his position he would be working with people and it was important that there be no excessive demands made but that there should be harmonious relations between management and personnel.

That the Parking Authority is a working Board; that during his probationary period in the position he should make every effort not to be a "Big Shot" or "Boss"; that, in a sense, he himself was on trial to demonstrate that the work of the Parking Authority would work smoothly and successfully under his direction.

Members of the Authority have reviewed with him at two-week intervals Mr. Calo's problems and progress and have set up, with his approval, an evaluation aid covering various points of performance.

During this probationary period, due to his lack of tact, his abrasive personality, his lack of respect and consideration for the knowledge, ability,

continued

Director of Personnel

time and interest of personnel of the Parking Authority, his over-reacting to unfamiliar situations, his making moves and statements without sufficient knowledge or background of matter under consideration, have caused employee relations to deteriorate very markedly with the result that performance has suffered and public relations have suffered.

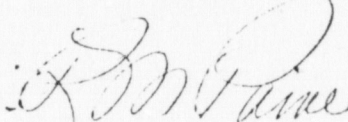
Lacking cooperation, credibility and respect, there is no way in which the operation of the Authority can continue to be successful. No purpose would be served in continuing the probationary period, since the situation has already become intolerable and is not one which can be remedied by additional exposure and/or training. The many incidents of conflict involve not only personnel of the Authority but members of the public and others with whom the Authority has relations. Irreparable damage may have been done already.

This action has been approved by the Parking Authority at a properly posted Special Meeting of the Authority held at 11:00 a.m. July 5, 1974 at the office of the Authority in the Chase Building at City Hall. The following members of the Parking Authority were present:

R. Morris Paine
Raymond Giannamore
William Barton
James Jannitto

Very truly yours,

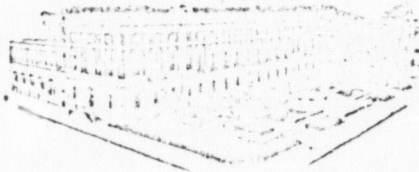
WATERBURY PARKING AUTHORITY



R. Morris Paine, Chairman

Copy to: Francis X. Calo (2) ✓

EXHIBIT B



WATERBURY PARKING AUTHORITY
THE CITY OF WATERBURY
CONNECTICUT

July 5, 1974

Director of Personnel
City of Waterbury
Waterbury, Connecticut

Dear Sir:

In accordance with Chapter IX, Section 5 of the Civil Service Rules and Regulations, the Waterbury Parking Authority hereby requests approval to remove Francis X. Calo from the position of Director of the Parking Authority.

Subsequent to his certification for said position and prior to his acceptance of it, members of the Parking Authority met with Mr. Calo and outlined the job requirements.

Members of the Authority have reviewed with him at two-week intervals, Mr. Calo's problems and progress and have set up, with his approval, an evaluation aid covering various points of performance.

The Parking authority finds during this working test period that Mr. Calo is unable to perform the duties of the position satisfactorily and that his habits do not merit his continuance with the service.

This action has been approved by the Parking Authority at a properly posted Special Meeting of the Authority held at 11:00 A.M. July 5, 1974 at the office of the Authority in the Chase Building at City Hall.

The following members of the Parking Authority were present:

R. Morris Paine
Raymond Giannamore
William Barton
James Jannitto

The four above-listed members polled individually voted for approval.

*Approved: Albert J. Paine
Director of Personnel
July 5, 1974 4:15 P.M.*

Very truly yours,
WATERBURY PARKING AUTHORITY

R. Morris Paine
R. Morris Paine, Chairman

Waterbury Republican,

June 28, 1974

Parking Authority DirectorCalo's Job 'Scrutinized'

By CLARK JOHNSTON

The performance of Francis X. Calo as director of the Waterbury Parking Authority has apparently been under unusually close scrutiny — and has resulted in reported widespread dissatisfaction by fellow employees, *The Republican* learned Thursday.

There are reports the Authority, which conferred privately with Calo Thursday, may be close to considering whether to

keep him on after his probation expires, or let him go.

Authority Chairman R. Morris Paine admitted a performance check with Calo has been made at least once every two weeks and that a special meeting to review his record will be held next week.

However, when asked why such a close study is being made, Paine replied it has been a long time since the Agency has had a director and "we

thought a review should be thoroughly discussed, rather than just wait out a probationary period.

"The Authority has been trying right along to match the job and the man and to properly evaluate it."

Calo could not be reached for comment. The session with him was held after the regular board meeting formally adjourned early Thursday evening.

As director of the agency, Calo has the responsibility of the operation of the staff, personnel and the ramparages.

Calo was hired for the \$12,000 a year job March 21 because of his ranking in a civil service examination after the top contender, Street Supt. Fred DeLeon first accepted, and then refused the position.

When asked specifically whether the Authority is satisfied with the way Calo is doing his job Paine said he would not comment.

He said he feels that as an individual he shouldn't have any observations and that any general statement either way ought to come from the entire board.

"We will meet again next week to review this," he said, reminding that "it has been difficult" to get all five members together "to discuss things. We are going to have a review... We haven't had a director for quite awhile."

Asked if Calo had been asked to resign, Paine answered only indirectly that it is "always a possibility" that he could, but when pressed as to whether it has been suggested to the director, Paine replied, "Officially, I cannot say."

Is there any validity to reports that Calo and the staff are not getting along, Paine was asked. "I am interested in any person who takes over a job and how they perform with the people they work with," he said.

Waterbury Republican,
July 3, 1974

Agency Wants Calo Fired As Parking Boss

The Waterbury Parking Authority decided Tuesday to ask that Francis X. Calo be fired from his \$12,600-a-year post as the Authority's executive director.

The decision was reached at what was termed a "personnel review meeting" at the Authority office in the Chase Building. Chairman R. Morris Paine and members William A. Barton and Raymond Gianna more attended.

They met privately with Atty. Charles Negaro, who represents Calo, and then with Negaro and Calo. Paine said a letter would be sent to the civil service director asking that Calo be dismissed.



Francis X. Calo
(faces dismissal)

supervising operations of the city's rampages, parking lots and meters.

"I have no idea what will be in it (the letter)," Calo said. He has heard no complaints or grievances, he said. "I am doing everything I can to get along with them (the authority)," he said.

Albert Provost, civil service director, said a letter asking for dismissal must list the circumstances of why Calo is to be fired by the Authority. Then if he approves, Calo will be fired, Provost said.

Under the city charter, the executive director is appointed by the Parking Authority, Provost said. However, civil service regulations call for approval by the civil service director to make termination final.

The post was vacant for four years when Calo was appointed.

The next man on the civil service list for the post is Henry P. Kaliss of 29 Natche Ter. Waterbury.

Others on the list are:

Thomas L. Bonwell of 192 Prospect St.; Chester A. Langlais of 188 Faber Ave.; Robert S. Verrastro Sr. of 58 Robin Crest; all of Waterbury; Joseph E. Lynch of 104 Henderson Road, Fairfield; and Michael J. Betz of 1267 Forest Road, New Haven.

Paine said everyone on the Authority agreed to the decision based on informal discussion. A special meeting of the Authority has been called for Friday at 11 a.m. to formally act on the matter.

Paine would not say why the Authority was asking for Calo's removal. However, he said the reasons will be stated in the letter.

Calo said he still doesn't know why the Authority is dissatisfied with his work. He has been in the post since March and is in the six month probationary period. Calo's responsibilities include

Provost Backs Decision To Fire Calo

By BOB GREENE
The city's civil service director Friday approved the Parking Authority's decision to fire Francis X. Calo from his \$12,000-a-year job as executive director.
The Authority, in a stormy session, yesterday ratified a decision made Tuesday to oust Calo.
Calo was removed from his post about half-way through his 10-month probationary period. He was hired in March, to supervise operations of the city's

parking rampages, parking lots and meters.

Albert E. Provost, civil service director, said Friday night he had signed and approved the Parking Authority's decision after its meeting, formally terminating Calo from the job. Calo said if he was fired, he would take the matter to court.

In a letter to Provost, Calo asked for a meeting to discuss the Authority's charges against him. Provost said Friday Calo's case would have to be heard by the Civil Service Commission.

Next in line for the job on the civil service list is Henry P. Kaliss of 29 Natalie Ter., a retired state police sergeant and currently a public information officer with the state Consumer Protection Department.

Kaliss wouldn't comment on whether he would take the job if it was offered.

"I'll have an answer when the letter comes (from the Civil Service director)," Kaliss said. "I personally don't think the Authority will want to be rushing into looking for a new direc-

tor right away."

The Parking Authority has the option of hiring Kaliss on a probationary basis or operating without an executive director for another two years, at which time a new exam would have to be given.

At the Authority's meeting, Friday a letter stating the charges against Calo were read into the record. The letter was made public after Calo conferred with his attorney, Frederick W. Krug.

"He (Calo) feels it should be

made public. He feels he has been doing his job. There has been no valid criticism. He has not been informed of any charges. He and anyone else would be able to rebut them if they are made public," Krug said.

The letter said in part: "During this probationary period, due to his lack of tact, his abrasive personality, his lack of respect and consideration for the knowledge, ability, time and interest of personnel of the Parking Authority, his over-reacting

to unfamiliar situations, his making moves and statements without sufficient knowledge or background of matters under consideration, have caused employee relations to deteriorate very markedly, with the result that performance has suffered and public relations have suffered.

"Lacking co-operation, credibility and respect, there is no way in which the operation of the Authority can continue to be successful.

"Irreparable damage, may have been done already."

After the letter was read by R. Morris Paine, Authority chairman, Krug responded. "I have listened closely. I didn't hear one fact. All the statements were based on subjective judgment," he said.

Due process calls for a confrontation with people and charges. These charges should be in the letter so the personnel director can make a factual judgment," he said.

"These are facts that can be substantiated," Paine said. The specific charges will not be made public, but will be available to the civil service director.

The charges should be specified in basic fairness to his client, Krug said.

"In basic fairness to other employees, they can't be made public," Comr. Raymond Giannamore said.

Krug asked if the truth of the charges by employees had been investigated. He questioned whether it might be possible that the employees were out to "get Calo."

"We have gone over each incident with the employee concerned and with Calo, Giannamore said. "We can substantiate everything in there."

"The director of personnel is aware of the incidents. We talked with him first," Paine said.

Calo interrupted declaring, there is a regular grievance procedure and no employee had ever come to him and he had heard of no grievances.

"How could they go to you?" They did try to go to you," Paine replied.

"You have interfered with me from the day I have been here," Calo responded.

Krug said he didn't think the Authority should discount an independent inquiry into the truth of the charges against Calo.

"He has never denied any of them," Giannamore said. "We have gone over every incident. That's what that letter is based on. His statements warranted that letter."

"You may be perfectly right in reaching those conclusions," Krug said. But the charges should be more specific so this can be determined.

They had talked with Calo after each incident informally after commission meetings every two weeks, Giannamore said.

At the beginning of the open portion of the meeting, Calo questioned why no secretary was taking minutes. Paine immediately called a secretary.

After a statement outlining their authority to dismiss Calo, the commissioners took a unanimous vote. Other commissioners voting were William A. Barton and James V. Jannitto.

"The Parking Authority finds that during this working test period, he (Calo) has been unable to perform the duties satisfactorily. His habits do not merit his continuance with the service," the motion read in part.

Calo interrupted at this point to demand that names and charges be put on the table.

When Paine tried to sum up the history that led to the action, Calo again interrupted. "I don't want to hear any history. I want to hear specific charges and persons making charges," he said.

At that point, Giannamore got up and closed the door to the meeting room. Calo jumped up and opened it saying, "It is an open meeting. I want the names here and now in front of this man (the press)."

Calo read a lengthy statement into the record in which he challenged the authority of the commissioners to fire him. Calo said he was the department head and not the Authority.

[APR. 22]

Waterbury American,

July 6, 1974

Waterbury American, Saturday, July 6, 1974-3

Calo Fired From \$12,000-A-Year Job Might Take Matter To Court

Francis X. Calo has been fired from his \$12,000-a-year post as executive director of the Waterbury Parking Authority half way through his six month probationary period.

Albert E. Provost, civil service director, signed and approved Calo's dismissal by the Parking Authority immediately following a stormy special meeting Friday at which a decision made Tuesday to oust Calo was formally ratified.

Calo said if he was fired from the job he would take the matter to court. He was hired in March to supervise operations of the city's parking ramp-ages, parking lots and meters.

In a letter to Provost, Calo asked for a meeting to discuss the Authority's charges against him. Provost said Friday Calo's case would have to be heard by the Civil Service Commission.

Next in line for the job on the civil service list is Henry P. Kaliss of 29 Natalie Ter., a retired state police sergeant and currently a public information officer with the state Consumer Protection Department.

Kaliss wouldn't comment on whether he would take the job if it was offered.

At the Authority's meeting, Friday a letter stating the charges against Calo were read into the record. The letter was made public after Calo conferred with his attorney, Frederick W. Krug.

"He (Calo) feels it should be made public. He feels he has been doing his job. There has been no valid criticism. He has not been informed of any charges. He and anyone else would be able to rebut them if they are made public," Krug said.

The letter said in part: "During this probationary period, due to his lack of tact, his abrasive personality, his lack of respect and consideration for the knowledge, ability, time and interest of personnel of the Parking Authority, his over-reacting to unfamiliar situations, his making moves and statements without sufficient knowledge or background of matters under consideration, have caused em-

ploye relations to deteriorate very markedly, with the result that performance has suffered and public relations have suffered.

"Lacking co-operation, credibility and respect, there is no way in which the operation of the Authority can continue to be successful.

"Irreparable damage may have been done already."

After the letter was read by R. Morris Paine, Authority chairman, Krug responded: "I have listened closely. I didn't hear one fact." All the statements were based on subjective judgment, he said.

Due process calls for a confrontation with people and charges. These charges should be in the letter so the personnel director can make a factual judgment, he said.

"These are facts that can be substantiated," Paine said. The specific charges will not be made public, but will be available to the civil service director.

Krug asked if the truth of the charges by employees had been investigated. He questioned whether it might be possible that the employees were out to "get Calo."

We have gone over each incident with the employee concerned and with Calo. Giannamore said: "We can substantiate everything in there."

"The director of personnel is aware of the incidents. We talked with him first," Paine said.

Calo interrupted declaring there is a regular grievance procedure and no employee had ever come to him and he had heard of no grievances.

"How could they go to you? They did try to go to you," Paine replied.

"You have interfered with me from the day I have been here," Calo responded.

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After a statement outlining their authority to dismiss Calo, the commissioners took a unanimous vote. Other commissioners voting were William A. Barton and James V. Jannitto.

"The Parking Authority finds that during this working test period, he (Calo) has been unable to perform the duties satisfactorily. His habits do not merit his continuance with the service," the motion read in part.

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At that point, Giannamore got up and closed the door to the meeting room. Calo jumped up and opened it saying, "It is an open meeting. I want the names here and now in front of this man (the press)."

Calo read a lengthy statement into the record in which he challenged the authority of the commissioners to fire him. Calo

said he was the department head and not the Authority.

Paine said that John Phelan, assistant corporation counsel, had ruled that in this case the Parking Authority is the department head as the appointing authority.

Calo left for a few minutes. When he returned, he said he had called his attorney. Krug arrived shortly afterwards.

Before Krug arrived, Calo repeatedly broke into the proceedings to challenge the legality of the meeting.

When the meeting ended, Calo asked for a photostatic copy of the shorthand notes made by the secretary. He was refused.

Before the start of the open portion of the meeting the commissioners met for about 25 minutes in executive session. Calo was barred from it. "By my not being present, I feel my rights are not being observed," he said. They are blocking off any possibility of reconciliation.

He maintained before the start of the meeting, as he has throughout the dispute, that he didn't know what the commissioners had against him.

After the meeting was over, Paine said, "I think the members of the public and the press, have had a very good demonstration."

Calo immediately responded: "I don't think your comment was warranted."

Calo called the sessions at the end of Authority meetings referred to by Giannamore as "kangaroo courts. A lot of it (the charges) is conjured up," he said. The Authority gave a distorted version of what happened.

EXHIBIT G

Waterbury American,
July 8, 1974

City News



Around Waterbury

Francis X. Calo was fired last week as executive director of the Parking Authority.

This morning, he told The American, he drove up to the Brook Street Rampage but couldn't get in. It seems the mechanical arm refused to budge.

You think someone is trying to tell him something?

EXHIBIT H

Waterbury Republican,
July 11, 1974

Ousted Parking Official Still Reporting To Work

By BOB GREENE

Francis X. Calo, who was fired from his post as executive director of the Waterbury Parking Authority, said Wednesday he is reporting to the authority office for work three times a day on advice of his attorney.

Calo said he was officially notified of his firing from the \$12,000-a-year job Friday afternoon by R. Morris Paine, Authority chairman. Parking com-

missioners met that morning to formally act on Calo's dismissal. He was half way through his six-month probation period in the position.

Calo said he feels he must have two weeks notice for dismissal under civil service regulations. He was told he was fired immediately, he said. Also, he said he has about three weeks of accrued time for work done on weekends.

The city comptroller told him he is still on the payroll, Calo said. He told the comptroller he was ready for work, but was given no duties, he said. He has no duties nor authority at his old office, Calo said.

Calo said when he tried to enter Brook Street Rampage Wednesday morning, the mechanism arm wasn't working. He said he checked the arms every morning as executive director.

The Civil Service Commission will meet today to decide whether to hear an appeal by Calo of his dismissal. Calo has stated he will take the issue to court if he loses the appeal.

EXHIBIT I

Waterbury American,
July 11, 1974

Calo On Job Three Times Every Day

Francis X. Calo, who was fired from his post as executive director of the Waterbury Parking Authority, said Wednesday he is reporting to the authority office for work three times a day on advice of his attorney.

Calo said he was officially notified of his firing from the \$12,000-a-year job Friday afternoon by R. Morris Paine, Authority chairman. Parking commissioners met that morning to formally act on Calo's dismissal. He was half way through his six-month probation period in the position.

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weeks of accrued time for work done on weekends.

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Calo said when he tried to enter Brook Street Rampage Wednesday morning, the mechanical arm wasn't working. He said he checked the arms every morning as executive director.

The Civil Service Commission will meet today to decide whether to hear an appeal by Calo on his dismissal. Calo has stated he will take the issue to court if he loses the appeal.

EXHIBIT J

Editorial, Waterbury American,
July 9, 1974

Calo's Futile Fight

A person who is given a job on a probationary basis is not officially hired until the probationary period is over and his work has been judged satisfactory. Technically, Francis X. Calo has been released from the post of executive director of the Waterbury Parking Authority and not fired.

The evidence presented at an authority hearing seemed to substantiate overwhelmingly that Calo's service was unsatisfactory to the authority. He was still on probation. It was a logical step for the authority to vote to terminate his service.

The city's civil service director has upheld the authority's decision on the basis of the authority's complaints against Calo. The Civil Service Commission will hear the case if Calo chooses to fight for the job, but it may be a futile gesture, judging by the dis-

satisfaction the authority has expressed over Calo's service.

The purpose of a probationary period is to enable the employer to determine if the probationary employee is suitable for the job. In Calo's case, the authority has determined that Calo does not meet its requirements, even though he placed highest on the civil service test. Since Calo's service has proven unsatisfactory during the trial period it would be foolhardy for the authority to hire him permanently.

Fortunately, probationary periods are part of the civil service system. They provide a relatively painless way of separating a new worker from a job for which he is unsuited. Calo has made the situation more painful for himself by fighting what appears to be a plausible and reasonable decision on the authority's part.

EXHIBIT K

Waterbury Republican or Waterbury
American, ca. July 11, 1974
(exact date uncertain).

Calo Plea Scheduled Thursday

The Civil Service Commission will meet Thursday at 5 p.m. in the Chase Building to discuss a request for a hearing from Francis X. Calo, who was fired from his job Friday as executive director of the Parking Authority.

Albert Provost, acting personnel director, said Monday his office received the request from Calo asking for a discussion with the commission. Calo was fired before he ended his six-month probationary period with the Parking Authority.

Civil Service regulations say that any employee who is serving a probationary period in a civil service job may be fired any time within that period and does not have the privilege of an appeal from the firing.

Provost said the commission is extending a courtesy to Calo by meeting to discuss whether he should be heard, since the law does not require the commission to even consider a hearing in his case.

Calo was fired from his \$12,000 job by the Authority when it ratified a decision it made last Tuesday to oust him. Provost later backed the Authority on its decision.

At the Authority's Friday meeting, a letter was read stating the charges against Calo. Calo, through his attorney, Frederick W. Krug, had said he felt he was doing his job and that there had been no valid criticism. Calo said he had not been informed of any charges against him.

Authority Chairman R. Morris Paine read a letter from the authority which accused Calo of lacking tact, having an abrasive personality and lacking respect and consideration for the knowledge, ability, time and interest of the personnel of the Parking Authority. It also accused Calo of over-reacting to unfamiliar situations, making moves and statements without sufficient knowledge or background of matters under consideration and causing employee relations to deteriorate markedly.

EXHIBIT L

Waterbury American,
July 12, 1974

Civil Service Board Mulls Role In Discharge Of Calo

The case of the ousted executive director of the Parking Authority is still a mystery to members of the Civil Service Commission.

The commissioners met Thursday to discuss the circumstances surrounding the firing of Francis X. Calo by the Parking Authority, and determine whether they would grant him a hearing on his removal.

However, Calo failed to show up for the meeting, and the commissioners now wonder whether they can hear the case at all.

Calo was removed from his post last Friday after Parking Authority members said Calo lacked "cooperation, credibility and respect" in the job. He was fired midway through his six-month probationary period.

At Thursday's meeting, Civil Service commissioners agreed that Calo's presence was necessary in order for them to study his complaint that the Parking Authority's charges against him were "unfounded, biased and incorrect."

The commission ran into another snag when Chairman James B. Griffin told the board he believed that Calo was not entitled to an appeal or a grievance to the commission because he was a probationary employee.

"Under the Civil Service code, we can't hear any appeal at all from him," Griffin said. "The best we can do for him is discuss his case, and we can't do that until we examine all the circumstances."

"Calo is plainly asking us to substitute our judgment for the Parking Authority's," he said.

Albert Provost, executive director of Civil Service, said he had not informed Calo the commission would be meeting to discuss his case.

Calo had written to Provost requesting a meeting with him to discuss the Parking Authority's charges. Provost referred the request to the Civil Service Commission.

Cmsr. Richard Bruno said he felt Calo "wasn't asking for an appeal, he wants a discussion. But we can't discuss it without

his presence. Calling this meeting without him was a waste of time."

The commission agreed to have Provost contact Calo and ask him for an explicit list outlining the charges and complaints.

After the commissioners have reviewed the specifics, they agreed they would decide whether Calo's situation comes under the commission's jurisdiction.

Calo said he was informed his suspension was effective immediately last Friday, although he said he believes he must have two weeks notice for dismissal under the civil service code.

The controller's office has been instructed to terminate Calo from the post officially July 19. Authority Chairman Morris Paine told the authority Thursday.

The authority will ask Calo by letter to turn in all keys to authority properties and offices and any material from authority files.

EXHIBIT M

Waterbury Republican,
July 12, 1974

Civil Service Doubts Role In Calo Case

By MARY KANE

The case of the ousted executive director of the Parking Authority is still a mystery to members of the Civil Service Commission.

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The authority will ask Calo by letter to turn in all keys to authority properties and offices and any material from authority files.

(App. p. 30)

EXHIBIT N

Waterbury Republican,
July 13, 1974

Hearing On His Firing

Calo: I Wasn't Invited

By MARY KANE

Francis X. Calo, ousted executive director of the Parking Authority, said Friday he received no invitation to the Civil Service Commission's meeting Thursday to discuss his case, and the executive director specifically told him not to attend.

The commission met Thursday to determine whether to give Calo a hearing on his complaint that the Parking Authority had fired him without justification.

Calo was midway through the six-month probationary period of his \$12,000-a-year post when he was fired.

At Thursday's meeting, the commission agreed they were unable to do anything about the matter because Calo wasn't there.

According to Calo, Albert Provost, Civil Service executive director, had told him Tuesday he was not welcome at the meeting.

"Provost told me not to be at the meeting, that the commissioners didn't want me there," Calo said. "One of the commissioners wanted me to come, but I didn't receive any notification to attend."

"These commissioners know where I live they could have contacted me," he said.

"I just feel that the possibility existed that someone was trying to manipulate the situation."

Provost, at Thursday's meeting, said Calo had not been invited. Friday Provost said he had told Calo Tuesday there would be no need for him to at-

tend the meeting.

"I told Calo the commissioners were only going to discuss whether to invite him before the commission," Provost said.

"I was asked to tell Calo that by the commission Chairman, James Griffin," he said, "and I was only following orders. Griffin said he felt there was no need for Calo to attend."

At Thursday's meeting, the commission agreed to ask Calo for a list of specifics outlining the situation.

The commissioners said they would look over what Calo provided them, and then determine whether they could grant Calo a hearing under the civil service code.

Calo said Friday "I'll wait until I see how much their action is going to curtail the extent of my responses. In order for me to make a valid response (to Parking Authority charges), I've got to first know what exactly those charges are."

Waterbury Republican,

July 23, 1974

Commission Shuns Calo

The Civil Service Commission decided again Monday it wasn't able to discuss the firing of Francis X. Calo from his short-lived job as head of the Parking Authority.

The commission received a letter from Calo asking that his case be considered.

But the matter was dropped when the commissioners agreed they had no knowledge of a communication referred to in Calo's letter.

Calo was midway through the

six month probationary period of his \$12,000-a-year post when he was fired.

Earlier this month, Calo asked the commission by letter for a hearing. The commission tabled the matter when Calo failed to show.

The ex-director later said he had not been invited to the meeting.

The commission, however, sent Calo a letter asking him to outline the points he wanted to discuss.

In a letter dated July 18, Calo referred the commissioners to "my initial correspondence of July 5."

Comsr. Murray Weiss said the commission had no copy of the letter, the other members agreed, and the matter was dropped.

In his latest letter Calo argues:

—Only the Civil Service Commission can insure that Civil Service rules and regulations, which cover firings, are applied

to city employees. Calo was fired by the Parking Authority.

—Acting Personnel Director Al Provost's approval of Calo's dismissal may be invalid because Provost holds his post only in an "acting" capacity.

—Parking Authority Chairman R. Morris Paine backed his power to fire Calo by referring to an opinion by city attorney John Phelan. But, says Calo, Paine was not able to produce a copy of that opinion.

EXHIBIT P

Waterbury Republican,
July 24, 1974

On Letter Of Appeal

Calo Charges 'Foul Play'

Fired Parking Authority Director Francis X. Calo said Tuesday the Civil Service Commission's inability to find his letter appealing his dismissal smacks of "foul play."

Monday night the commissioners received a letter from Calo asking his case be considered.

They decided they could do nothing about the matter because they had no knowledge of

the "initial correspondence of July 5" referred to in Calo's letter. Comr. Richard Bruno said Tuesday.

Personnel Specialist Thomas Ball, substituting for vacationing Personnel Director Al Provost, told the commission he could not find a copy of the original Calo letter.

Calo wrote the letter received Monday in response to the commission's request that he out-

line the points he would like discussed. The commission made the request at a meeting held on the Calo matter earlier this month.

Calo said Tuesday that meeting was held as a result of the July 5 letter.

He said he sent the letter and a list of the state and city regulations he believes apply to his dismissal to Provost with copies going to Mayor Victor M. Marabruno and the Parking Authority.

According to Calo, Provost promised copies be made and distributed to the commissioners.

Bruno said Tuesday, he saw a copy of what might have been Calo's original letter but knew nothing of the list of regulations which reportedly accompanied it.

Calo said "either the commissioners are lying or Provost is obstructing his appeal."

Calo was fired last month when he was halfway through his six-month probationary period in the director's post.

He has questioned the authority's right to fire him.

UNITED STATES DISTRICT COURT

For The
DISTRICT OF CONNECTICUT

FRANCIS X. CALO	CIVIL ACTION NO. H-74-269
	:
Plaintiff	:
	:
v.	:
	:
R. MORRIS PAINE, ET ALS	:
	:
Defendants	:
	: SEPTEMBER 18, 1974

A F F I D A V I T

- - - - -

Personally appeared Victor Mambruno, of Waterbury,
Connecticut, who, being duly sworn, deposes and says:

1. That he is the Mayor of the City of Waterbury and
has been Mayor since May 30, 1971, upon the death of the late
Mayor Edward D. Bergin, and has since been elected to the office
twice, in November 1971 and November 1973.

2. He is aware that in September 1973 Mr. Calo ran
for the position of City Comptroller on a Democratic primary
slate which ran in opposition to a slate that he headed.

3. At that time Mr. Calo was a member of the Board of Tax Review of the City of Waterbury.

4. At no time did he attempt to remove Mr. Calo from his position as a member of the Board of Tax Review.

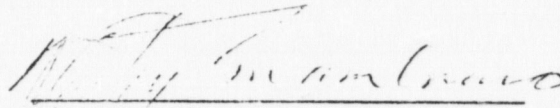
5. At no time did he in any way attempt to prevent Mr. Calo from assuming the position of Executive Director of the Waterbury Parking Authority, a post that Mr. Calo "won" by placing second in a Civil Service examination.

6. When the Corporation Counsel ruled that the person who placed No. 1 in the Civil Service examination was legally entitled to remain in his Street Department position, then affiant immediately approved the certification of Mr. Calo and signed Mr. Calo's "rate card" for the Parking Authority position. No City employee can assume a City position until the Mayor signs his rate card.

7. Affiant has never interfered in any way with Mr. Calo's assumption of the probationary position nor in any way interfered with him during his probationary period.

8. Affiant never gave any information to the press concerning Mr. Calo, concerning the items referred to in Paragraphs 52 and 53 of plaintiff's complaint. Subsequent to July 5,

1974, in response to a press query, affiant may have talked to a person from the press.



Victor Mambruno

STATE OF CONNECTICUT:

ss. Waterbury

COUNTY OF NEW HAVEN:

On this, the 18th day of September, 1974, personally appeared Victor Mambruno, signer and sealer of the foregoing Affidavit and swore to the truth of same, before me


John F. Phelan
Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

For The
DISTRICT OF CONNECTICUT

FRANCIS X. CALO	:	CIVIL ACTION NO. H-74-269
	:	
Plaintiff	:	
	:	
v.	:	
	:	
R. MORRIS PAINE, ET ALS	:	
	:	
Defendants	:	
<hr/>		SEPTEMBER 18, 1974

A F F I D A V I T

- - - - -

Personally appeared Albert E. Provost, of Waterbury, Connecticut, who, being duly sworn, deposes and says:

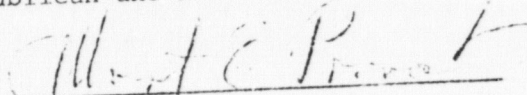
1. He is a defendant in the captioned matter.
2. He is Personnel Director of the City of Waterbury, acting, in that capacity, under a special assignment pursuant to the Waterbury Civil Service Rules and Regulations.
3. In regard to the allegations of Paragraph 43 of the plaintiff's complaint, affiant states that he is an independent voter and, as a classified service employee of the City of Waterbury, and more particularly as Personnel Director, he is forbidden

to participate in partisan political activity. He is not closely associated, either personally or politically, with the defendant Mayor, or with the three named defendants who are Parking Authority Commissioners.

4. As to Paragraph 46 of the plaintiff's complaint, he avers that he did not process the certification of Mr. Calo until March 1974 for the following reasons:

In November 1973 an eligibility list for the position of Executive Director of the Waterbury Parking Authority was established. Mr. Calo placed No. 2 on this list. The No. 1 candidate, Mr. DeLeon, has for many years been Street Superintendent of the City of Waterbury, and "tried out" the Parking Authority position for two days and then decided to return to his Street Superintendent position. The Board of Public Works, the appointing authority for the Street Superintendent's position, requested, in late January 1974, a ruling from the Corporation Counsel as to the status of Mr. DeLeon's position with the Street Department. On March 5, 1974 the Corporation Counsel ruled that Mr. DeLeon in fact never officially resigned as Street Superintendent. Thereupon the legal ruling was obtained, which cleared the way for the appointment of the No. 2 eligible, Mr. Calo, to the Parking Authority position. On March 6, 1974 affiant certified Mr. Calo's name to the Parking Authority.

5. As to plaintiff's allegations in Paragraphs 53 and 54 and other portions of the complaint, that newspaper articles caused him harm and deprivation of his First Amendment rights, the affiant can aver that he never called any newspaper reporter to give such reporter any information on this matter. He may have given information to a reporter when the reporter called him in regard to a statement made by Mr. Calo. He does know, however, that the attached July 5, 1974 letter from Mr. Calo to him arrived at his office from Mr. Calo with the notation on the lower left-hand corner that a copy of the letter was being given "to the newspaper", the Waterbury Republican and American.

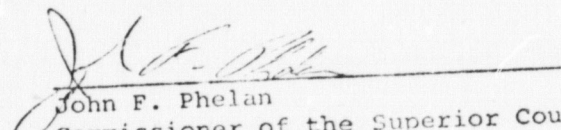

Albert E. Provost

STATE OF CONNECTICUT:

ss. Waterbury

COUNTY OF NEW HAVEN:

On this, the 18th day of September, 1974, personally appeared Albert E. Provost, signer and sealer of the above Affidavit, who swore to the truth of same, before me,


John F. Phelan
Commissioner of the Superior Court

SUBJECT: LETTER OF REQUEST FOR DISMISSAL BY THE WATERBURY
PARKING AUTHORITY OF FRANCIS X. CALO

TO: ALBERT PROVOST, DIRECTOR OF PERSONNEL, CIVIL SERVICE
COMMISSION, CITY OF WATERBURY, CONN., CHASE BUILDING,
GRAND STREET, WATERBURY, CONNECTICUT

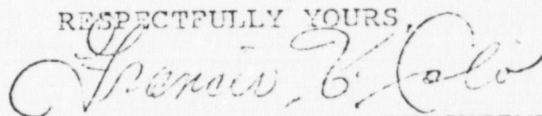
DEAR SIR AND GENTLEMEN:

I BELIEVE THAT THE LETTER OF REQUEST FOR DISMISSAL OF
FRANCIS X. CALO FROM THE POSITION OF EXECUTIVE DIRECTOR
OF THE WATERBURY PARKING AUTHORITY IS UNFOUNDED, BIASED AND
INCORRECT.

I HAVE DONE NOTHING MORE THAN PURSUE MY RESPONSIBILITIES
IN THE MANNER DESCRIBED IN THE JOB DESCRIPTION THAT YOU
PROVIDED TO ME AND ASSIGNED TO THE POSITION FOR WHICH I
APPLIED AND SUCCESSFULLY PAST THE EXAMINATION THEREOF.

I WOULD LIKE TO ARRANGE A TIME FOR DISCUSSION OF THE
CHARGES AND COMPLAINTS UPON WHICH THE WATERBURY PARKING
AUTHORITY LETTER IS BASED. I HAVE NEVER RECEIVED ANY
COMPLAINTS OR GRIEVANCES OF THE MANNER AND TYPE ALLEGED AND
THEREFORE CANNOT UNDERSTAND ANY JUSTIFICATION AND PURPOSE
FOR THE DISMISSAL.

RESPECTFULLY YOURS,



FRANCIS X. CALO, EXECUTIVE DIRECTOR
WATERBURY PARKING AUTHORITY

JULY 5, 1974

Mayer
Neuhaus. w R46
Kring

UNITED STATES DISTRICT COURT

For The
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. H-74-269

FRANCIS X. CALO

Plaintiff

v.

R. MORRIS PAINE, ET ALS

Defendants

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:
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:
:

SEPTEMBER 18, 1974

MOTION OF DEFENDANTS TO DISMISS COMPLAINT

The defendants move the Court as follows:

To dismiss the complaint, with particular reference to plaintiff's claim for a temporary and permanent injunction reinstating the plaintiff to his (probationary) position as Executive Director of the Waterbury Parking Authority, because the complaint does not state a substantial federal question. The plaintiff's claims (that the application^{to him} of the Waterbury Civil Service Rules and Regulations re termination of a probationary employee constitute, as to him, a deprivation of "liberty" and of "property interests" and constitute a violation of his First Amendment rights) are without merit when viewed against the case law of this Circuit

and the attached Affidavits of R. Morris Paine, Paymond Giannamore,
Victor Mambruno and Albert E. Provost.

D E F E N D A N T S:

By: Frank T. Healey

CORPORATION COUNSEL'S OFFICE

By: John F. Phelan

Their Attorneys

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCIS X. CALO, :
Plaintiff : CIVIL ACTION NO. H-74-269
VS. :
R. MORRIS PAINE, ET AL :
Defendants : September 18, 1974

PARTIAL STIPULATION OF FACTS FOR HEARING
ON MOTION FOR PRELIMINARY INJUNCTION

The plaintiff, FRANCIS X. CALO, and the defendants, ALBERT E. PROVOST, JAMES B. GRIFFIN, LOUIS MASTERS, RICHARD BRUNO, MURRAY WEISS, and WILLIAM J. SULLIVAN, individually and in their official capacities, hereby stipulate, solely for the purpose of decision on the plaintiff's Motion for Preliminary Injunction, and without prejudice to the defendants' right to contest the jurisdiction of the Court or to file a Motion to Dismiss or subsequently to deny such allegations, that the following paragraph numbers of the plaintiff's complaint may be presumed to be true:

- (1) #18.
- (2) #19.
- (3) #20, except for the phrase "Connecticut law and".
- (4) #30.
- (5) #31.
- (6) #32.
- (7) #33, the first sentence only.
- (8) #34. - cf. para 16, infra.
- (9) #35. ditto.
- (10) #36.
- (11) #40. - except for the phrase "state...laws"
- (12) #52.
- (13) #53.
- (14) #54.
- (15) #62.

The parties to this stipulation further stipulate that:

(16) In denying the plaintiff's request for a hearing, the above-named defendants believed that the Civil Service Commission of the City of Waterbury was not required by its Rules to grant a hearing to a probationary employee.

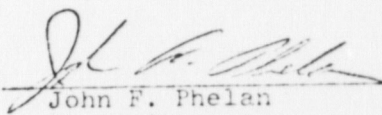
PLAINTIFF

By

Raphael L. Podolsky
His Attorney

DEFENDANTS, Albert E. Provost,
James B. Griffin, Louis Masters,
Richard Bruno, Murray Weiss,
and William J. Sullivan, indi-
vidually and in their official
capacity

By


John F. Phelan
Their Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCIS X. CALO, :
 :
 : Plaintiff :
 vs. : CIVIL ACTION NO.
 R. MORRIS PAINE, ET AL : H- 74-269
 :
 : Defendants :
 :

AFFIDAVIT OF DEFENDANT R. MORRIS PAINE
with respect to
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION
and
DEFENDANT'S MOTION TO DISMISS

-[App. p. 45]

AFFIDAVIT

PART I

The defendant, R. Morris Paine, states the following:

1. Subsequent to a certification of plaintiff for the position of Director and prior to his acceptance of it members of the Parking Authority met with the plaintiff and outlined the job requirements stressing the following points:

(a) The operation of the Parking Authority has been very successful and the guidelines set up for its operation require no change.

(b) In his position he would be working with people and it was important that there not be excessive demands made but that there should be harmonious relations between management and personnel.

(c) That the Parking Authority is a working board. That during his probationary period in the position he should make every effort not to be a "big shot" or "boss"; that in a sense he himself was on trial to demonstrate that the work of the Parking Authority would proceed smoothly and successfully under his direction.

(d) That members of the Authority would be available to him following each of the Parking Authority meetings held twice monthly and at that time Mr. Calo's problems and progress would be reviewed and evaluated.

(e) That during each working day, I, as the Chairman of the Authority would be available to him at the Authority's office at 1:30 P.M. so that he might review with me any problems he was having.

[App. p.46]

During the period of plaintiff's employment with the Authority members of the Board did in fact meet with the plaintiff after each of the meetings between the time of his employment and the time of his discharge to review with him the problems that arose in the course of his employment, to give him the opportunity to state his side of each of the incidents involved, to suggest to him ways of improving his management and to give him opportunity to come back at the following meeting with his further comments on the incidents involved.

During the period of approximately three months from the middle of March to the 13th of June, many incidents arose which reflected on plaintiff's ability to direct the agency. These were reviewed with the plaintiff and I can specifically recall at least ten such incidents with respect to the factual situation and plaintiff's response to each.

~~One~~ of these incidents took place prior to the Authority's regular meeting of June 13, 1974 and all were reviewed with him either at that meeting or prior to that meeting.

At the evaluation meeting following the regular Board meeting of June 13, Commissioner Giannamore suggested to the plaintiff that he seriously consider resigning his position since on the basis of all of the incidents involved Commissioner Giannamore felt that there was no way he could vote to retain plaintiff.

I concurred in that course of action and plaintiff was asked to consider this.

At the evaluation meeting following the Board meeting of June 27, 1974 plaintiff was questioned as to whether he would resign his position and informed the Commissioners that he would not.

The Board then informed plaintiff that if he did not resign by the following noon hour action would be taken to dismiss him. Plaintiff then called his Attorney and requested that the Board wait until his attorney arrived at the meeting, which they did. The matter was reviewed with Fred Rosnick, Esq. and Mr. Rosnick requested that plaintiff be given until the following Tuesday, July 2 to determine his course of action. On Tuesday, July 2, 1974 members of the Authority met with plaintiff and his attorney, Charles Negaro, Es., to obtain his answer.

Plaintiff indicated that he had not been informed of the charges against him. As Chairman I indicated that he had been informed but we would be happy to review them with him again and began to review the incidents which we had specifically reviewed with him at the previous reviewing evaluation meetings, all prior to or on June 13, 1974. Attorney Negaro stopped this process indicating that he did not want to go into details.

Following this meeting a special meeting of the Authority was called for Friday, July 5, 1974.

At that meeting plaintiff and Fred Krug, Esq., his attorney, were present and the commission at that time voted to request permission of the Civil Service Director to remove plaintiff from the position of Executive Director of the Parking Authority. That motion was adopted.

Mr. Rosnick, Mr. Negaro, and Mr. Krug are all members of the same law firm.

My decision with respect to this motion was based solely on the plaintiff's performance during the probationary period and upon incidents which were all reviewed with him during such period and to which he responded during such period.

My decision was in no way based on any other consideration.

During the entire period of plaintiff's employ the Authority attempted to protect him from publicity with respect to incidents involving his performance and at no time either directly or indirectly gave publicity to such events.

The charges with respect to the plaintiff's performance were not made public until he requested that they be made such at the July 5 meeting and were not made public until after that meeting. A copy of the minutes of the July 5th meeting are attached hereto.

Based upon my personal knowledge of the personnel of the Waterbury Parking Authority gained over nineteen years of experience with these people it would be my opinion that to order plaintiff's reinstatement to the Authority as its Executive Director would devastate the morale of the personnel of the Authority and would lead to wholesale resignations or requests for transfers.

Attachments.

- 4 -

[App. p.49]

Part II

I am the Chairman of the Parking Authority for the City of Waterbury and have been a member of that Authority for nineteen years.

At the time of my appointment I was not registered with any political party nor have I been at any time since. I have always been an "Independent".

I was initially appointed by a Republican mayor and now serve under a Democratic mayor. In my years of services on the Authority I have served under three Republican mayors and three Democratic mayors.

My only associations with the present mayor have been when the present mayor served as a member of the Finance Board and there was Parking Authority business with that board and currently Parking Authority business with the Mayor's Office.

I have never had either social or political relationships with the Mayor.

During the entire period that plaintiff was in the employ of the Authority I had no conscious knowledge of plaintiff having been a political aspirant during the 1973 primary election nor did anyone ever bring this fact to my attention.

During the entire period that plaintiff was in the employ of the Authority I had no conscious knowledge of plaintiff having served on any municipal board at any time nor did anyone ever bring this fact to my attention.

During the entire period that plaintiff was in the employ of the Authority I had only one conversation with the Mayor with

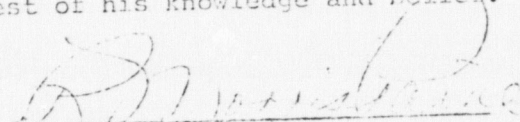
[App. p.50]

respect to plaintiff and the Mayor gave me no advice or order to discharge plaintiff.

Any delay in certifying plaintiff was due to technical legal problems associated with the No. 1 certified candidate, Fred DeLeon, rather than with plaintiff. These problems were resolved when the Corporation Counsel issued an opinion with respect to the status of Mr. DeLeon on March 5, 1974.

DEFENDANT'S VERIFICATION OF AFFIDAVIT

Defendant, R. MORRIS PAINE, being first duly sworn, deposes and says that he has read the foregoing affidavit hereto attached and finds it to be true to the best of his knowledge and belief.

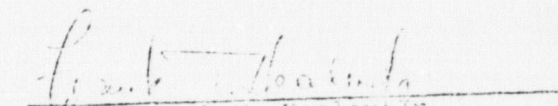

R. Morris Paine

STATE OF CONNECTICUT
COUNTY OF NEW HAVEN

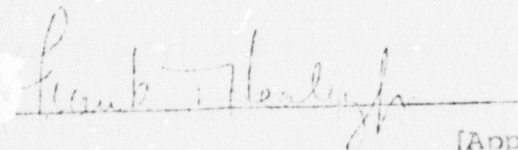
ss: Waterbury

Duly sworn and subscribed to before me, this 17th day of

September, 1974.


Frank T. Healey, Jr.
Commissioner of the Superior Court

I certify that I have mailed or delivered a copy of this affidavit to all counsel of record.



[App. p.51]

WATERBURY PARKING AUTHORITY

SPECIAL MEETING - July 5, 1974

Present: Mr. R. Morris Paine
Mr. Ray Giannamore
Mr. Wm. Barton
Mr. J. Jannitto

Absent: Mr. J. Ubaldi

Also present: Mr. F. X. Calo
Atty. Fred Krug
Bob Greene, R/A reporter

The meeting was called to order by the Chairman, Mr. Paine, and on a motion by Commissioner Giannamore, seconded by Commissioner Barton, it was voted to go into executive session.

Meeting reconvened--

Mr. Paine asked where Mr. Calo was, reporter answered that he had just left his office to join the meeting, he arrived, and the meeting proceeded. Mr. Calo questioned whether this was an "official" meeting and asked that a secretary be present to take the minutes.

The Chairman explained that this was a special meeting of the Parking Authority, notice of which had been properly posted in the City Clerk's office Tuesday afternoon; all members had been notified except Mr. Ubaldi who apparently is out of town as several attempts were made by various members to reach him. However, Commissioner Ubaldi was contacted previously and has conveyed his feelings on the matter under consideration to Authority members.

With regard to the removal of Francis X. Calo from the position of Executive Director of the Parking Authority, the Civil Service Rules and Regulations which apply are stated in Chapter IX, Section 5 - Dismissal During Probationary Period - "(a) At any time during the probationary period, a department head, with the approval of the Director of Personnel, may remove an employee if in his opinion the working test period indicates that such employee is unable or unwilling to perform the duties of the position satisfactorily or that his habits and lack of dependability do not merit his continuance with the service. Upon such removal, a report in writing shall be sent to the Director of Personnel and to the employee listing the reasons for the removal."

Mr. Paine explained that the words "department head" in this case meant the Parking Authority in the appointing board -- Assistant Corporation Counsel, Atty. John Phelan, has counseled.

Commissioner Giannamore made the following motion which was seconded by Commissioner Barton - "Be it resolved that the Parking Authority finds that during the working test period that Mr. Francis X. Calo is unable to perform the duties of the position satisfactorily and that his habits do not merit his continuance with the service. In accordance with Chapter IX, Section 5 of the Civil Service Rules and Regulations, the Waterbury Parking Authority hereby requests

continued

permission to remove Francis K. Calo from the position of Executive Director of the Parking Authority."

There was some discussion - Mr. Calo challenged the right of the Authority to make this decision. Mr. Paine commented that they were proceeding according to the Rules and Regulations of the Civil Service system by asking the permission of the Director of Personnel to remove him from his position. Mr. Calo maintained that he had been defamed before the people of the City and had a right to know the charges against him, and asked for a copy of the charges. He then read a "Memorandum re: Review of Performance of Executive Director, Waterbury Parking Authority" (copy attached "1" and made a part of these minutes.) Mr. Calo questioned whether the definition of the Parking Authority as the Department Head was available in written form from the Corporation Counsel's office. Mr. Paine responded that the ruling was verbal and the Authority is proceeding on this basis with four of the five members present. A motion was made and seconded that the discussion be closed.

On a motion by Commissioner Giannamore, seconded by Commissioner Jarmitto, it was unanimously (members polled individually) voted that the Authority request permission to remove Francis K. Calo from the position of Executive Director (see "2")

Mr. Paine stated that the second section of Chapter IX, Section 5, subsection (a) reads - "Upon such removal, a report in writing shall be sent to the Director of Personnel and to the employee listing the reasons for the removal." He read a letter which summarized the reasons for the dismissal-- (completed copy attached as part of these minutes "3").

Mr. Calo interrupted repeatedly asking that "charges" be made public and he be allowed to confront his accusers. Commissioner Giannamore explained that the Authority was acting in what would be considered the best interest of Mr. Calo--that there not be too much publicity about personnel problems.

ATTORNEY KRUG ARRIVED AT THIS POINT.

Mr. Paine reminded those present that this was a meeting of the Parking Authority, not a court of law; no one was on trial. He explained to Atty. Krug that the Authority had already voted to request the approval of the Director of Personnel to remove Mr. Calo from the position of Executive Director, and that the Authority was now discussing the next step which will be a written report listing the reasons for the action.

Atty. Krug protested that there had been no claims or charges made publicly against Mr. Calo "until now". Commissioner Giannamore replied that this was in an attempt to protect Mr. Calo; Mr. Paine added that Mr. Calo does not seem to be concerned about his reputation when he asks for these charges to be made public.

ATTY. KRUG AGREED TO SPEAK TO HIS CLIENT PRIVATELY, AND COMMISSIONER GIANNAMORE MOVED, AND IT WAS VOTED THAT THIS BE ALLOWED.

continued

[App. p.53]

Mr. Paine continued with his explanation -- in the event the approval of dismissal is received from the Director of Personnel, a letter must be prepared listing the reasons for the removal and given to the Director of Personnel and Mr. Calo.

Mr. Calo demanded he be given "all the facts and names" and his Attorney, Fred Krug, added that his client had no idea what the charges were and feels that everything should be made public and that there can be no valid criticism of what he is doing. Atty. Krug felt that his reading of that section of the Rules & Regulations allows for a Department head to make this decision but that there is no provision for the Department head who is on probation.

Mr. Paine continued - "I have a letter which summarizes the situation and which the Authority members hope to approve at this meeting. It will be written to the Director of Personnel, with a copy to Mr. Calo. (see attached "3") Commissioner Giannamore made a motion, seconded by Commissioner Barton, to forward this letter to the Personnel Director and Mr. Calo as soon as approval of the dismissal is received from the Personnel Director.

Atty. Krug protested that the "basic concept of due fairness, the right of a person to face his accusers" was being violated; Mr. Paine replied that all these facts have been discussed in the past with Mr. Calo and are available. Commissioner Giannamore added that the Authority members have met with Mr. Calo and have gone over these incidents with him, everything in the letter can be substantiated, and the letter is warranted.

Atty. Krug felt that the Director of Personnel could not make a judgement as he did not have the facts in his possession, but Mr. Paine assured him that Mr. Provost had been apprised from time to time as problems arose and had sufficient background on the subject.

Accusing Mr. Paine of interfering with him ever since he took the job, Mr. Calo volunteered that no employee had filed a grievance during this time; his counsel asked whether the facts will be explained and whether the Director of Personnel will have a chance to look into them.

"We have gone over every one of these incidents with Mr. Calo after each one of our regular meetings," said Commissioner Giannamore, "and based on only his side of the story and his own statements, that letter is warranted." Mr. Paine added that the Director of Personnel has been advised over a period of time of what was happening, and he had outlined the procedure the Authority should follow; at this time all he can do is approve or disapprove of the action.

When Atty. Krug reiterated that Mr. Calo should be able to reply to any charges so that the Director of Personnel can make a considered decision, Commissioner Giannamore replied that "if he requires more facts we will furnish them to him."

continued

[App. p.54]

The Chairman summarized - "It has been moved and seconded that in the event we receive the approval of the Director of Personnel for the dismissal of Mr. Calo, this be the form that the letter will take; that a copy will be sent to the Director of Personnel and a copy sent to Mr. Calo. It was unanimously voted to approve this action.

Atty. Krug requested that a copy of this letter be furnished him.

Mr. Calo requested that the secretary's shorthand notes be duplicated in their present form and a copy given him. Commissioner Ciannamore moved the request be denied -- "those are not the minutes, those are notes. The minutes will be available when they have been prepared."

The meeting was adjourned.

Respectfully submitted,

Elsie Ruffeth,

Secretary

[Note: Attachments "2" and "3" to these minutes are omitted from the Appendix because they are identical to Exhibits A and B of the Complaint, found at pp. 17-19 of this Appendix.]

MEMORANDUM RE: REVIEW OF PERFORMANCE OF
EXECUTIVE DIRECTOR, WATERBURY PARKING
AUTHORITY

A. Applicable Law.

Appointments to the Executive Directorship of the Waterbury Parking Authority are governed by the applicable provisions of the General Statutes and the Rules and Regulations of the Civil Service Commission of the City of Waterbury. The statutes and the rules establish the procedures to be followed and the criteria to be applied in evaluating a probationary appointment, and in determining whether that appointment should be made permanent. There exists no authority, other than the statutes and rules, which regulates this subject, and any attempt by persons other than those designated by the statutes and rules to dismiss or remove from office a probationary appointment is without basis within the law.

B. Who May Dismiss Probationary Officers.

As the following analysis will show, no member of the Waterbury Parking Authority acting by himself may dismiss the Executive Director during his probationary period. Nor does the law vest the Parking Authority acting as a whole with such authority. As a municipal agency, the Parking Authority has only such powers as have been conferred upon it by statute. The enabling act in this instance is Special Act No. 611, approved August 11, 1955 - an act creating a Waterbury Parking Authority, as amended by Special Act - Senate Bill No. 295-371 on May 21, 1957. Section 11 of this Act specifically states that all personnel employed by the Waterbury Parking Authority shall be employees of the City of Waterbury and shall have all the rights of the employees of the City. On its face, the Section applies to probationary employees as well as permanent employees. Nothing within the Act speaks to the procedure by which such employees are to be hired or terminated, and it is clear from the omission of this essential concern, that the purpose of the act is to subject the Authority to civil service rules and regulations.

Section 7-417 of the Connecticut General Statutes provide in pertinent part that at the conclusion of a probationary period, the appointing officer is to determine whether or not the candidate's appointment should be made permanent. This authority lies exclusively in the appointing officer under the terms of the statute.

Chapter 9, Section 5 of the Civil Service Rules and Regulations permits a determination to be made during a probationary period by "a department head, with the approval of the Director of Personnel" as to whether an employee should be removed from his position. Normally, the regulations would supplement the provisions of Section 7-417 paraphrased above, that is, dismissal might occur under the rules for the reasons stated therein, if in the view of the Director of Personnel and the department head such action is necessary.

[App. p. 56]

redate the record.

1135 5 July 1974 at Sp. Meeting of W.P.A.

Francis J. Alo ①

However, in the instant case, the party under examination is in fact the department head. The rules do not provide for alternatives in such a case, and it is submitted that, concerning probationary periods for department heads, the statutes alone govern the procedure to be followed in determining whether the appointment should be made permanent.

Whether or not this is the case, it is clear that under the rules and regulations, at least the approval of the Director of Personnel of the Civil Service Commission is required. In addition, it is clear that neither individual Parking Authority commissioners, nor the Authority as a whole may exercise this function.

C. Reasons for Dismissal.

Section 7-417 of the General Statutes permits the appointing officer to discharge a candidate at will at the conclusion of his probationary period. Although few cases have been decided on the issue, it is submitted that even the appointing officer cannot act arbitrarily and capriciously in making his final evaluation, but that due process requires him to follow some standard which is both ascertainable and fair in reaching his conclusion.

In addition, as the rules provide, dismissals may take place during the probationary period for the reason stated in Section 5 of Chapter 9. This section carefully describes the specific reasons for which a probationary dismissal may occur, and it should go without saying that dismissals may not occur for other reasons than those stated. The rules do not provide for a dismissal at will even by the Director of Personnel and department head during the course of a probationary period.

In the instant case the Executive Director of the Parking Authority has not concluded his probationary period, so that the provisions of Section 7-417 do not apply. In addition, no reasons whatever have been submitted which would grant any person or body the authority to dismiss pursuant to Chapter 9, Section 5 of the Civil Service Rules, whether or not such rules can be deemed to apply to a department head during a probationary period. In addition, the Executive Director has been given no opportunity whatever to respond to any charges that others may have levied against him, nor has he been informed of who might have levied those charges.

D. Conclusion.

The procedure sought to be followed by the Waterbury Parking Authority in its evaluation of the performance of the Executive Director is without any basis, either under the Civil Service Rules and Regulations, or under the General Statutes. The Parking Authority itself is simply without power to terminate this probationary period. Moreover, no reasons whatever have been advanced for the position assumed by the Parking Authority, nor is it clear that this position is in fact the position of the Authority as a whole. Under these circumstances, there is no basis whatsoever for permitting the removal of the Executive Director.

[App. B-571]

July 1974

1135 read into the record of J. meeting of W.P.A.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCIS X. CALO,

Plaintiff

vs.

R. MORRIS PAINE, ET AL

Defendants

CIVIL ACTION NO.

H- 74- 269

AFFIDAVIT OF DEFENDANT R. GIANNAMORE

with respect to

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

and

DEFENDANT'S MOTION TO DISMISS

[App. p.58]

AFFIDAVIT

PART I

The defendant, Raymond Giannamore, states the following:

1. Subsequent to a certification of plaintiff for the position of Director and prior to his acceptance of it members of the Parking Authority met with the plaintiff and outlined the job requirements stressing the following points:

(a) The operation of the Parking Authority has been very successful and the guidelines set up for its operation require no change.

(b) In his position he would be working with many people and it was important that there not be excessive demands made but that there should be harmonious relations between management and personnel.

(c) That the Parking Authority is a working board. That during his probationary period in the position he should make every effort not to be a "big shot" or "boss"; that in a sense he himself was on trial to demonstrate that the work of the Parking Authority would proceed smoothly and successfully under his direction.

(d) That members of the Authority would be available to him following each of the Parking Authority meetings held twice monthly and at that time Mr. Calo's problems and progress would be reviewed and evaluated.

2. During the period of plaintiff's employment with the Authority members of the Board did in fact meet with the plaintiff after each of the meetings between the time of his employment and the time of his discharge to review with him the problems that arose in the course of his employment, to give him the opportunity to

state his side of each of the incidents involved, to suggest to him ways of improving his management and to give him opportunities to come back at the following meeting with his further comments on the incidents involved.

During the period of approximately three months from the middle of March to the 13th of June, many incidents arose which reflected on plaintiff's ability to direct the agency. These were reviewed with the plaintiff and I can specifically recall at least five such incidents with respect to the factual situation and plaintiff's response to each.

All of these incidents took place prior to the Authority's regular meeting of June 13, 1974 and all were reviewed with plaintiff either at that meeting or prior to that meeting.

At the evaluation meeting following the regular Board meeting of June 13, I suggested to the plaintiff that he seriously consider resigning his position since on the basis of all of the incidents involved I felt that there was no way I could vote to retain plaintiff.

Commissioner Paine concurred in that course of action and plaintiff was asked to consider this.

At the evaluation meeting following the Board meeting of June 27, 1974 plaintiff was questioned as to whether he would resign his position and informed the Commissioners that he would not.

The Board then informed plaintiff that if he did not resign by the following noon hour action would be taken to dismiss him. Plaintiff then called his Attorney and requested that the Board wait until his attorney arrived at the meeting, which they did.

The matter was reviewed with Fred Rosnick, Esq. and Mr. Rosnick requested that plaintiff be given until the following Tuesday, July 2 to determine his course of action. On Tuesday, July 2, 1974 members of the Authority met with plaintiff and his attorney, Charles Negaro, Esq., to obtain his answer.

Plaintiff indicated that he had not been informed of the charges against him. Commissioner Paine indicated that he had been informed but we would be happy to review them with him again and began to review the incidents which we had specifically reviewed with him at the previous reviewing evaluation meetings, all prior to or on June 13, 1974. Attorney Negaro stopped this process indicating that he did not want to go into details.

Following this meeting a special meeting of the Authority was called for Friday, July 5, 1974.

At that meeting plaintiff and Fred Krug, Esq. his attorney were present and the commission at that time voted to request permission of the Civil Service Director to remove plaintiff from the position of Executive Director of the Parking Authority. That motion was adopted.

Mr. Rosnick, Mr. Negaro, and Mr. Krug are all members of the same law firm.

My decision with respect to this motion was based solely on the plaintiff's performance during the probationary period and upon incidents which were all reviewed with him during such period and to which he responded during such period.

In fact, my decision was based solely on plaintiff's responses to us at the various review meetings and his manner of conducting himself at such meetings.

My decision was in no way based on any other consideration.

During the entire period of plaintiff's employ the Authority attempted to protect him from publicity with respect to incidents involving his performance and at no time either directly or indirectly gave publicity to such events.

The charges with respect to the plaintiff's performance were not made public until he requested that they be made such at the July 5 meeting and were not made public until after that meeting. A copy of the minutes of the July 5th meeting are attached hereto. Based upon my personal knowledge of the personnel of the Waterbury Parking Authority gained over six years of experience with these people it would be my opinion that to order plaintiff's reinstatement to the Authority as its Executive Director would devastate the morale of the personnel of the Authority and would lead to wholesale resignations or requests for transfers.

Attachments

- 4 -

[App. p.62]

PART II

I am a member of the Parking Authority for the City of Waterbury.

I have been a member of that Authority for six years.

I was appointed by a Republican Mayor and now serve under a Democrat. I have for the entire six years been a registered Democrat.

I have never had social relationships with the Mayor and my political associations have been limited to working for him during the election.

During the entire period that plaintiff was in the employ of the Authority I had no conscious knowledge of plaintiff having been a political aspirant during the 1973 primary election nor did anyone ever bring this fact to my attention.

During the entire period that plaintiff was in the employ of the Authority I had no conscious knowledge of plaintiff having served on any municipal board at any time nor did anyone ever bring this fact to my attention.

During the entire period that plaintiff was in the employ of the Authority I had only one conversation with the Mayor with respect to plaintiff and the Mayor gave me no advice or order or suggestion to discharge plaintiff.

Any delay in certifying plaintiff was due to technical legal problems associated with the No. 1 certified candidate, Fred DeLeon, rather than with plaintiff. These problems were resolved when the Corporation Counsel issued an opinion with respect to the status of Mr. DeLeon on March 5, 1974.

[App. p.63]

DEFENDANT'S VERIFICATION OF AFFIDAVIT

Defendant, Raymond Giannamore, being first duly sworn, deposes and says that he has read the foregoing affidavit hereto attached and finds it to be true to the best of his knowledge and belief.

Raymond Giannamore
Raymond Giannamore

STATE OF CONNECTICUT
COUNTY OF NEW HAVEN

ss: Waterbury

Duly sworn and subscribed to before me this 18th day of
September, 1974.

FRANK JAMES T. Healey Jr
Commissioner of the Superior Court

I certify that I have mailed or delivered a copy of this affidavit to all counsel of record.

Frank T. Healey Jr.

[Note: The attachments to this affidavit are omitted from the Appendix because they are identical to the attachments to the affidavit of R. Morris Paine.]

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[App. p.64]

NOV 21 1974
U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FRANCIS X. CALO :

v. :

CIVIL NO. H-74-269

R. MORRIS PAINE, Chairman of
the Waterbury Parking :
Authority, individually and :
in his official capacity, ET AL :

MEMORANDUM OF DECISION ON
DEFENDANTS' MOTION TO DISMISS

This is an action brought by plaintiff Francis X. Calo, former probationary Executive Director of the Parking Authority of the City of Waterbury, pursuant to 42 U.S.C. § 1983 (1970) and 28 U.S.C. § 1343(3) (1970) against the chairman and members of the Parking Authority and the city Civil Service Commission and the mayor alleging that he was dismissed from his position without a prior hearing in violation of his rights to procedural due process and in retaliation for political activities in opposition to the mayor of the city. The matter is currently before the Court on plaintiff's motion for a preliminary injunction, which was denied following a hearing, and defendants' motion to dismiss the complaint. It is unnecessary to detail the reasons for denying the preliminary injunction as such denial was based upon a failure to show irreparable injury and, in addition, must follow from this ruling on defendants' motion to dismiss.

The defendants' motion to dismiss is somewhat ambiguous in that it states that the complaint does not allege a "substantial federal question." Although this could be construed as a motion to dismiss for a lack of federal jurisdiction under 28 U.S.C. § 1343(3), the Court chooses to construe it as a motion to dismiss for failure to state a claim on which relief may be granted. Fed.R.Civ.P. 12(b)(6); Sheahan v. White, Civ. No. 14,986 (D. Conn. May 31, 1972). Additionally, as testimony was presented at the hearing on plaintiff's motion for a preliminary injunction and other materials, including affidavits of the defendants, were submitted by the defendants and not objected to by the plaintiff, the motion will be treated as one for summary judgment. Fed.R.Civ.P. 12(b); Fed.R.Civ.P. 56.

I.

In October 1973 plaintiff Calo took a competitive civil service examination, offered by the Civil Service Commission of the City of Waterbury, for the position of Executive Director of the Waterbury Parking Authority. On March 6, 1974, his name was certified by the acting director of the Civil Service Commission to the Parking Authority as the highest ranking name on the list of eligibles for that position. On March 11 he commenced employment as Executive Director, but pursuant to the applicable Civil Service Rules

and Regulations of the City of Waterbury he was placed on probationary status for the first six months of his employment.

During the next few months, Mr. Calo met with members of the Parking Authority on several occasions and received some evaluation of his performance. There is dispute between the parties as to the frequency of these meetings, whether they were conducted on a regular basis, and the content and scope of the evaluative discussions which took place. However, for the purposes of defendants' motion it may be assumed that there were only three brief meetings and that no detailed criticisms, pointing to specific incidents of poor job performance, were presented to the plaintiff.

On June 13, 1974, plaintiff was asked by defendant Parking Commissioner Giannemore to consider resigning, a course of action which the plaintiff rejected. The request was renewed at an "evaluation" session on June 27, 1974, and once again the plaintiff expressed his intent to remain in his position. The members of the Parking Authority then informed the plaintiff that unless he submitted his resignation by noon of the following day, he would be fired. At the request of plaintiff's attorney who was present at part of the meeting, the issue was deferred and a meeting was scheduled for July 2. On that date, plaintiff, with his attorney present, stated his objection to the Parking Authority's proposed course of action, based upon their failure to detail the

reasons for his dismissal and to provide him with an opportunity to refute those charges. Defendant Paine, Chairman of the Parking Authority, offered to detail the basis of the Authority's decision, but the plaintiff refused the offer because of the informal nature of the meeting.

A formal public meeting was held to consider the issue of Mr. Calo's dismissal on July 5. At that meeting the members of the Parking Authority voted to request permission of the director of the Civil Service Commission to remove the plaintiff from his position. In addition, at the plaintiff's insistence, a letter from the Authority to the Acting Director of Personnel of the Waterbury Civil Service Commission, setting forth the grounds for his dismissal, was read into the record. The relevant portions of that letter stated:

"During this probationary period, due to his lack of tact, his abrasive personality, his lack of respect and consideration for the knowledge, ability, time and interest of personnel of the Parking Authority, his over-reacting to unfamiliar situations, his making moves and statements without sufficient knowledge or background of matter under consideration, have caused employee relations to deteriorate very markedly with the result that performance has suffered and public relations have suffered.

"Lacking cooperation, credibility and respect, there is no way in which the operation of the Authority can continue to be successful. No purpose would be served in continuing the probationary period, since the situation has already become intolerable and is not one which can be remedied by additional exposure and/or training. The many incidents of conflict involve not only personnel of the Authority but members of the public and others with whom the Authority has relations. Irreparable damage may have been done already."

There is no dispute, and the minutes of the meeting reflect, that the defendants were hesitant to publicize the reasons for the dismissal, but deferred to the plaintiff's request. It is clear from the minutes of the meeting that the plaintiff was not provided an opportunity to respond to the charges in any way and that, in fact, the vote on his removal took place prior to the arrival of his attorney at the meeting.

On July 5 the Civil Service Director ratified the Authority's decision and plaintiff was dismissed from his position, subject to his right to receive pay for the next two weeks. Subsequent to his dismissal, plaintiff made several requests for a hearing before the Civil Service Commission, but was refused. There is no dispute that at no time either before or after July 5 did the defendants provide the plaintiff with notice of the specific charges against him, an opportunity to confront witnesses or to refute the generalized charges contained in the July 5 letter.

Mr. Calo is a political figure of sorts in the City of Waterbury, having served on the Board of Tax Review and having sought the nomination for Comptroller of the City of Waterbury in September 1973 on a Democratic primary slate in opposition to the slate headed by the current mayor of Waterbury, a defendant in this action. Mr. Calo and his slate lost that election.

Probably as a result of his political activity, the events surrounding his dismissal were the subject of fairly

substantial coverage in the local newspapers. He has attached to his complaint copies of 14 articles which appeared in the newspapers. Most of them detail the developing procedural status of his dismissal and his subsequent efforts to obtain review of the decision of the Civil Service Commission. Only two of the articles mention the reasons for the dismissal, as set out in the letter of July 5. However, the defendants admit that the dismissal did receive considerable publicity and was a matter of substantial public interest.

Finally, there is no dispute that plaintiff Calo has remained unemployed since the date of his dismissal midway through his probationary period. The extent of his efforts to obtain employment, however, remains substantially undisclosed.

II.

Defendants first argue that their action in dismissing the plaintiff was not under color of state law as required by 42 U.S.C. § 1983 (1970). They acted pursuant to the Civil Service Rules and Regulations of the City of Waterbury which were adopted in 1962 following an amendment to the City Charter providing for the creation of a civil service system. From this they draw the conclusion that they were acting pursuant to municipal, not state, law.

This is not a case in which a municipality or agency thereof is named as a defendant. The plaintiff is properly

suing individual members of the Parking Authority, members of the Civil Service Commission and the mayor in their individual and official capacities. Thus, no issue is presented as to whether a governmental entity is a "person" for the purposes of 42 U.S.C. § 1983 (1970). City of Kenosha v. Bruno, 412 U.S. 507 (1973); Monroe v. Pape, 365 U.S. 167, 187-192 (1961). Rather, the question presented is whether individuals who act pursuant to regulations promulgated by a city civil service commission are acting under color of state law.

Regardless of what the situation might be in other cases, it is clear that at least here the defendants' action was under color of state law. In State ex rel. Sloane v. Reidy, 152 Conn. 419 (1965), the Connecticut Supreme Court discussed and upheld as valid the Waterbury civil service system. At issue in that case was whether the procedure established under the Connecticut Home Rule Act for creating municipal civil service systems preempted the preexisting authority contained in the Waterbury City Charter. The Court held that it did not and therefore the Waterbury civil service system had been validly created. What is of interest to the instant case, however, is the Supreme Court's observation that "[b]eing a creature of the state, the city of Waterbury has only such powers as have been granted to it by the legislature, whether by general or special act." Id. at 423. (Emphasis added.) In light of this authoritative analysis of the relationship of the city of Waterbury to the state, it is

clear that whenever an official of that city acts pursuant to municipal law, he also acts under color of state law. See Love v. Navarre, 262 F. Supp. 520 (C.D. Cal. 1967); cf. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Kissinger v. New York City Transit Authority, 274 F. Supp. 438 (S.D. N.Y. 1967).

III.

The plaintiff's first claim is that the defendants have violated his fourteenth amendment rights to due process by dismissing him without first providing a statement of specific reasons for his dismissal and a pretermination hearing. All parties agree that the merits of this claim must be judged by the standards contained in Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) and Perry v. Sinderman, 408 U.S. 593 (1972).

Roth established that a public employee is entitled to a due process hearing only if he can demonstrate that his dismissal deprived him of an interest in "liberty" or that he had a "property" interest in his continued employment. Plaintiff Calo argues that under the terms of the Waterbury Civil Service Regulations he had such a "property" interest and also that, as a result of his dismissal and the publicity surrounding it, he has been deprived of an interest in "liberty."

Property

There is no basis for plaintiff's contention that he had a property interest in his continued employment and thus was entitled to a pretermination hearing. In Roth the Court held that:

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Id. at 577.

In Perry v. Sinderman, 408 U.S. at 601, the Court made clear that such a legitimate claim could be predicated on something other than a formal tenure contract; it could also be based upon "rules or mutually explicit understandings that support his claim of entitlement to the benefit"

In this case, there was neither a formal contract of tenure nor such mutually explicit understandings. The plaintiff was hired and was immediately placed upon probationary status for a period of six months. Section 1 of Chapter IX of the Waterbury Civil Service Rules and Regulations states:

"The probationary period shall be regarded as an integral part of the examination process and shall be utilized for closely observing an employee's work, for securing the most effective adjustment of a new or promoted employee to his position and for rejecting any employee whose performance is not satisfactory."

The plaintiff recognizes that he had no entitlement to continued employment beyond the initial six-month probationary

period. However, he argues that he did have a legitimate expectation of continued employment during the six-month period and thus could not be fired without a hearing before the end of the six-month period. This argument is without merit.

The power of the Parking Authority to dismiss the plaintiff during his probationary period is governed by Section 5 of the Waterbury Civil Service Rules and Regulations, which provides in relevant part:

"(a) At any time during the probationary period, a department head, with the approval of the Director of Personnel, may remove an employee if in his opinion the working test period indicates that such employee is unable or unwilling to perform the duties of the position satisfactorily or that his habits and lack of dependability do not merit his continuance with the service. Upon such removal, a report in writing shall be sent to the Director of Personnel and to the employee listing the reasons for removal.

"(b) If an employee has committed an offense which is considered cause for disciplinary action under Chapter XII, he may be dismissed by his department head without prior notice. The written report listed in Section 6(a) [sic] above is mandatory.

"(c) If, however, an employee is dismissed because of his failure to adjust properly to his job, he shall be given fourteen calendar days' advance notice." 1/

Probation was established as a period during which department

1/

It is clear from the record that the plaintiff did receive his 14 days' advance notice. The plaintiff does not dispute this.

heads could observe the performance of employees and dismiss them, with the concurrence of the Director of Personnel, if in their opinion the employee failed to perform his work satisfactorily. The joint discretion given to the department head and the Director of Personnel was clearly intended to be unfettered. The above-quoted regulation provides no support for plaintiff's argument that at least during the six-month probationary period such discretion was to be curbed and subject to the employees' right to a due process hearing prior to dismissal. The regulation provides no basis for establishing a legitimate, objective claim to continued employment during the period of probation. Any such expectation which a probationary employee might have could only be unilateral and subjective and thus not entitled to due process protection. See Canty v. Board of Education of the City of New York, 470 F.2d 1111 (2d Cir. 1972), cert. denied, 412 U.S. 907 (1973).

Liberty

Under the standards established in Roth, a public employer may not dismiss an employee without a due process hearing if the dismissal adversely affects either one of two interests, included within the concept of liberty, interests which shall be referred to as the "reputational" and "employability" interests. To establish a violation of his "reputational" interest, plaintiff Calo would have to prove that the

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reasons given for discharging him "might seriously damage his standing and associations in his community."^{2/} To establish an injury to his interest in "employability," the plaintiff would have to show that the dismissal reasons had imposed upon him "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities."^{3/} Roth, 408 U.S. at 573.

2/

"The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For '[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.' Wisconsin v. Constantineau, 400 U.S. 433, 437; Wieman v. Updegraff, 344 U.S. 183, 191; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123; United States v. Lovett, 328 U.S. 303, 316-317; Peters v. Hobby, 349 U.S. 331, 352 (Douglas, J., concurring). See Cafeteria & Restaurant Workers v. McElroy, 367 U.S. 886, 898." 408 U.S. at 573.

3/

"Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. The State, for example, did not invoke any regulations to bar the respondent from all other public employment in state universities. Had it done so, this, again, would be a different case. For '[t]o be deprived not only of present government employment but of future opportunity for it

"Reputational" Interest

In this case, the Court finds that the plaintiff's ~~"reputational"~~ interest has not been adversely affected by any action taken by the defendants. The plaintiff relies upon the charges contained in the letter of July 5, such as "lack of tact," "abrasive personality," and the deterioration of employee relations, to establish that the defendants have impugned his good name. To be sure, there is no dispute that these charges did receive widespread publicity in the local press. However, those charges were contained in the July 5 letter from the Authority to the Civil Service Director, the contents of which would have been disclosed to the plaintiff, but would not have been made public but for the plaintiff's explicit request that they be made part of the public record of the July 5 meeting. Plaintiff cannot himself cause uncomplimentary statements to be publicized and then rely upon such publication to establish an injury to his reputation.

3/ cont'd

certainly is no small injury Joint Anti-Fascist Refugee Committee v. McGrath, supra, 341 U.S. at 185 (Jackson, J., concurring). See Truax v. Raich, 239 U.S. 33, 41. The Court has held, for example, that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities 'in a manner . . . that contravene[s] . . . Due Process,' Schwartz v. Board of Bar Examiners, 353 U.S. 232, 238, and, specifically, in a manner that denies the right to a full prior hearing. Willner v. Committee on Character, 373 U.S. 96, 103. See Cafeteria Workers v. McElroy, supra, 367 U.S. at 898." 408 U.S. at 573-574.

But for the plaintiff's own action, the public would only have known that he was being dismissed for generally unsatisfactory work. While the dismissal itself may have had some tendency to reveal inability to meet job requirements, it can hardly be asserted that a mere dismissal from a public position, unaccompanied by a statement of reasons, could establish the kind of serious reputational injury contemplated by the Supreme Court in Roth. Cf. Roth, 408 U.S. at 574, n.13; Suarez v. Weaver, 484 F.2d 678 (7th Cir. 1973); Russell v. Hodges, 470 F.2d 212 (2d Cir. 1972).

"Employability" Interest

Despite the absence of any injury to a "reputational" interest, it is still necessary to consider whether there has been an injury to the "employability" interest which would support a claim for due process. The defendants have admitted that the letter of July 5 has been placed in the plaintiff's personnel file. Presumably, it will be referred to and possibly quoted from when a prospective future employer of the plaintiff's requests information regarding his job performance as Executive Director. Thus, despite the defendants' innocence in publicizing the contents of the letter, the presence of that letter in the plaintiff's personnel file may "[foreclose] his freedom to take advantage of other employment opportunities." Cf. Shirck v. Thomas, 486 F.2d 691 (7th Cir. 1973); Suarez v. Weaver, *supra*.

The question, however, of the standard to be applied in determining what constitutes a foreclosure of other employment opportunities is far from clear. In Roth the Court spoke in terms of the imposition of a stigma or other disability. It is reasonably clear that by "other disability" it had in mind situations in which the dismissal would leave an individual legally incapable of taking advantage of other employment opportunities. No such issue is presented under the facts of this case. Thus, the only issue is whether the charges against him constituted a stigma.

Before proceeding to the issue of what kinds of charges constitute a "stigma," it must first be decided whether in making such a determination a court should only look at the charges themselves or whether it should also consider testimony as to the actual impact which a discharge has had upon an employee's ability to obtain employment. In Roth the Court left this issue unsettled. It is clear that it recognized that certain kinds of charges, such as imputations of bad moral character or membership in a subversive organization, would constitute "stigmas per se"; that is, their natural effect would be to foreclose employment opportunities. In such cases it would be unnecessary to consider evidence of the actual impact which the charges might have had upon an individual's employability.

What is not clear from Roth, however, is whether there might be a category of charges that do not rise to the level

of a "stigma per se," but which could require an employer to grant a due process hearing if the discharged employee could prove that his dismissal had in fact impaired his ability to obtain future employment. At footnote 13 in Roth the Court stated:

"The District Court made an assumption 'that non-retention by one university or college creates concrete and practical difficulties for a professor in his subsequent academic career.' 310 F. Supp., at 979. And the Court of Appeals based its affirmance of the summary judgment largely on the premise that 'the substantial adverse effect non-retention is likely to have upon the career interests of an individual professor' amounts to a limitation on future employment opportunities sufficient to invoke procedural due process guarantees. 446 F.2d, at 809. But even assuming, arguendo, that such a 'substantial adverse effect' under these circumstances would constitute a state-imposed restriction on liberty, the record contains no support for these assumptions. There is no suggestion of how nonretention might affect the respondent's future employment prospects. Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of 'liberty.' Cf. Schwabe v. Board of Bar Examiners, 353 U.S. 232." Id. at 574.

In the arguendo portion of that footnote, the Court does seem to suggest that under some circumstances it might be appropriate to consider evidence regarding the actual impact which charges might have or did have upon an employee's ability to obtain employment. At the same time, however, it did make it clear that evidence that an individual was "somewhat less

attraction as an employee would not be sufficient to require a due process hearing. What might be sufficient is left unspecified.

Regardless of the possible application of the above quoted footnote, it is quite clear that lower courts have almost universally ignored the suggestion and have rendered judgment solely on the basis of whether they consider the circumstances of a dismissal to be stigmatizing per se. See, e.g., Suarez v. Weaver, supra; Lipp v. Bd. of Education of City of Chicago, 470 F.2d 802 (7th Cir. 1972); Russell v. Hodges, supra; Berry v. Hamblin, 356 F. Supp. 306 (M.D. Pa. 1973); Hajduk v. Vocational Technical & Adult Education District No. 13, 356 F. Supp. 33 (E.D. Wis. 1973); Sayah v. United States, 355 F. Supp. 1008 (C.D. Cal. 1973); Heaphy v. United States Treasury Dept., Bureau of Customs, 354 F. Supp. 396 (S.D. N.Y. 1973), aff'd, 489 F.2d 735 (2d Cir. 1974). But cf. Abeyta v. Town of Taos, 499 F.2d 323 (10th Cir. 1974); Perkins v. Regents of the University of Calif., 353 F. Supp. 618 (C.D. Cal. 1973). They have thereby implicitly rejected as irrelevant the actual impact which the dismissal has had upon an individual's employability.

Although this may seem harsh, it really is the only workable method for determining what charges are sufficiently severe to constitute a deprivation of liberty. It is already difficult enough for an employer to determine prior to the issuance of reasons for discharging an employee whether he

will subsequently be required to afford the employee a due process hearing at which time the latter can respond to the charges in order to clear his name. But there is a developing body of law on this issue and the employer with the aid of counsel might be able to make some reasonable guesses as to what kinds of statement would constitute a "stigma per se." If, however, a due process hearing were ordered whenever a discharged employee could demonstrate that he had, in fact, been unable to obtain employment, there would be no possibility of ever determining in advance of a dismissal whether a due process hearing would subsequently be required. The inevitable result would be that employers would dismiss without reasons, a result which the Second Circuit has termed "self-defeating" in that "the employee would lose the benefit of knowing what might profit him in the future." Russell v. Hodges, 470 F.2d at 217.

In addition, considering such evidence could lead to the anomalous result of a constitutionally permissible dismissal becoming progressively unconstitutional as the employee encountered difficulties in his search for a new job. At what point in the employee's unhappy search would a court be justified in stepping in and requiring a due process hearing? How great an effort in seeking employment should a court require of a dismissed employee before granting relief? These questions and others involving serious problems of proof would render the concept of "liberty" as outlined in

Roth both standardless and judicially unmanageable. The implicit determination by most lower courts to deal with this issue on a per se basis can be the only acceptable approach.

In reviewing the case law on this issue, it becomes apparent that although courts have noted the existence of the distinct "reputational" and "employability" interests involved in Roth, no standards have been suggested which would differentiate the two. The cases seem to suggest that the same kinds of statements that would injure an employee's reputation in the community would also impose a stigma foreclosing future employment opportunities. See, e.g., Lombard v. Bd. of Ed. of the City of New York, No. 73-2057 (2d Cir. July 22, 1974); Russell v. Hodges, supra. This is understandable because in most cases the individual's "reputational" and "employability" interests were both involved and thus the courts did not have to draw the distinction. In the instant case, however, the "reputational" interest is not involved and thus this Court must attempt to articulate a standard for assessing the stigmatizing impact of dismissal statements under the terms of Roth. In trying to arrive at such a standard, the existing case law, although not determinative, can certainly provide guidance.

Courts dealing with this issue in general have found it very difficult to formulate standards by which to judge employer dismissal statements. There are certain kinds of statements which have universally been considered stigmatizing.

These would include charges of drunkenness, Wisconsin v. Constantineau, 400 U.S. 433 (1971); membership in subversive organizations, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951); dishonesty, McNeill v. Butz, 480 F.2d 314 (4th Cir. 1973); Newcomer v. Coleman, 323 F. Supp. 1363 (D. Conn. 1970); immorality (including unethical professional conduct), Roth, supra; Suarez v. Weaver, supra; and mental instability or legal incompetency, Lombard v. Bd. of Ed. of the City of New York, supra; Dale v. Hahn, 440 F.2d 633 (2d Cir. 1971); McAuliffe v. Carlson, 377 F. Supp. 896 (D. Conn. 1974). However, there is little agreement as to the injurious effect of a wide range of other critical dismissal statements. Compare, e.g., Ortwein v. Mackey, 358 F. Supp. 705 (M.D. Fla. 1973) with Berry v. Hamblin, supra. Some courts have attempted to establish tests to be applied in making these determinations. For example, in Hajduk v. Vocational Technical and Adult Education District No. 13, supra, the Court held that a teacher was not entitled to a due process hearing because the charges against him "did not suggest immorality or irresponsibility, nor did they amount to such a conclusive evaluation of plaintiff's professional competence as would injure his good name." However, even this standard has not been easy to apply in a principled, predictable manner. Compare Whitney v. Board of Regents, 355 F. Supp. 321 (E.D. Wis. 1973) with Hajduk, supra and Carpenter v. City of Greenfield School District No. 6, 358 F. Supp. 220 (E.D. Wis. 1973).

In Russell v. Hodges, supra, the Second Circuit considered whether the dismissal of a police officer for sleeping on duty, absence from a post without authorization and wearing improper attire deprived the officer of some "liberty" interest. In concluding that the officer had suffered no such deprivation under the terms of Roth, the Court said:

"While Fletcher's case, see fn. 2, may be a shade closer, we believe the Court was thinking of something considerably graver than a charge of failure to perform a particular job, lying within the employee's power to correct; the cases cited as illustrations involved charges of chronic alcoholism or association with subversive organizations. Indeed, a general rule that informing an employee of job-related reasons for termination created a right to a hearing, in circumstances where there was no constitutional requirement for the state to do anything, would be self-defeating; the state would merely opt to give no reasons and the employee would lose the benefit of knowing what might profit him in the future."
470 F.2d at 217.

Although it is quite clear that the Court did not expressly distinguish between the "reputational" and "employability" interests, the standard which it does establish is very close to what this Court considers to be an appropriate definition of stigma in this context. A dismissal statement is stigmatizing if it charges an employee with immorality, dishonesty or some serious personality defect or societally condemned status which is beyond the power of the individual to change.

When measured against this standard, it is quite clear that the charges contained in the dismissal letter of July 5

are not stigmatizing. Mr. Calo is generally portrayed in that letter as an individual who is "abrasive," makes snap judgments and is difficult to work with. There are no suggestions that the plaintiff is dishonest or mentally unstable. He is merely charged with lacking the personality traits necessary for the position of Executive Director. This is not an imputation of some serious personality defect, nor is it the kind of personality trait which is beyond the ability of plaintiff Calo to change. The letter of July 5 did not stigmatize the plaintiff and thus did not foreclose his opportunities to take advantage of other employment opportunities in the sense intended in Roth. He is therefore not entitled to a due process hearing.

IV.

The plaintiff also claims that the defendants are being disingenuous when they claim that they fired him for incompetence on the job. Rather, he asserts, they fired him in retaliation for his partisan political activity in September 1973. As detailed above, plaintiff Calo ran and lost in the Democratic primary on a slate opposing that headed by Victor Mambruno, the present mayor of Waterbury and a defendant in this action. He alleges that defendants Faine, Giannemore and Barton, all members of the Parking Authority, and defendant Provost, Acting Director of Personnel of the Waterbury Civil

Service Commission, are personal and political friends of defendant Mambruno and that together they acted to dismiss him as an act of political retaliation. This, he alleges, violated his rights of political association under the first and fourteenth amendments and entitles him to automatic reinstatement, regardless of what other constitutionally permissible reasons may have existed for the dismissal. Sinard v. Board of Education of Town of Groton, 473 F.2d 988, 995 (2d Cir. 1973); Fluker v. Alabama State Board of Education, 441 F.2d 201, 210 (5th Cir. 1971).

The defendants submitted in support of their instant motion the affidavits of the defendants in question, all of whom aver that political considerations played no part in the decision to dismiss the plaintiff. The plaintiff did not submit any documentation to contradict the defendants' affidavits, nor was there any contrary evidence presented at the hearing held on plaintiff's motion for a preliminary injunction because of an agreement between opposing counsel to restrict that hearing to the issue of due process violations. However, if the factual dispute were of a material nature, this Court would not grant the defendants' motion on this count without first giving the plaintiff an opportunity to respond with affidavits, answers to interrogatories, or depositions. A motion for summary judgment should not be entered until the party opposing the motion has had a fair opportunity to conduct such discovery to meet the factual basis for the motion. It is especially important to observe

these procedural requirements when evidence of motivation is of critical importance." Illinois State Employees Union, Council 34 v. Lewis, 473 F.2d 561, 565-566 (7th Cir. 1972), cert. denied, 410 U.S. 928 (1973).

However, this Court is constrained by the ruling of the Second Circuit in Alomar v. Dwyer, 447 F.2d 482 (1971), cert. denied, 404 U.S. 1020 (1972) to hold that even assuming such a retaliatory motivation, the plaintiff's constitutional rights were not violated by his dismissal. In Alomar the Court considered the issue of whether an incoming Republican city administration could fire Democratic city employees upon their refusal to switch party affiliation. The Court held that "the sole protection for government employees who have been dismissed for political reasons must be found in civil service statutes or regulations." Id. at 483. See American Federation of State, County and Municipal Employees v. Shapp, 443 Pa. 527, 280 A.2d 375 (1971); Nunnery v. Barber, 365 F. Supp. 691 (S.D. W.Va. 1973); Moldawsky v. Lindsay, 341 F. Supp. 1393 (S.D. N.Y. 1972). But cf. Illinois State Employees Union, Council 34 v. Lewis, ^{4/}supra; Bond v. County of Delaware, 368 F. Supp. 618 (E.D. Pa. 1973).

^{4/} Even under the holding in Illinois State Employees Union, Council 34 v. Lewis, ^{supra} plaintiff Calo would not necessarily be constitutionally protected from dismissal for political reasons. The rationale of that case was restricted to employees in nonpolicy-making positions. See Indiana State Employees Assoc. v. Negley, 365 F. Supp. 225 (S.D. Ind. 1973); Jafree v. Scott, 372 F. Supp. 264 (N.D. Ill. 1974). Although this Court has heard no evidence regarding the job responsibilities of the Executive Director of the Waterbury Parking Authority, it is likely that it is a policy-making position.

To be sure, the facts in the instant case are different from those involved in Alomar. Waterbury has chosen to insulate the position of Executive Director of the Waterbury Parking Authority from political pressures by including it within the civil service system. That fact, however, does not change the nature of the constitutional considerations involved here. That a politically motivated dismissal may be proscribed under city regulations does not render such a dismissal unconstitutional if it would not be in the absence of such a regulation. The plaintiff's remedy is in the state, not the federal, courts. Cf. Rosenberg v. Martin, 478 F.2d 520 (2d Cir.), cert. denied, 414 U.S. 872 (1973).

Finally, the plaintiff has stated an independent claim against the defendants under 42 U.S.C. § 1983 that they conspired to deprive the plaintiff of the same alleged constitutional rights. As the plaintiff suffered no deprivation of any constitutional rights this claim must also fail.

Accordingly, judgment shall be entered for the defendants on all counts.

SO ORDERED.

Dated at Hartford, Connecticut, this 27th day of November, 1974.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCIS X. CALO

vs.

R MORRIS PAINE, Chairman of
the Waterbury Parking
Authority, individually and
in his official capacity, ET AL

108
CIVIL ACTION NO. H-74-269

United States District Court
District of Connecticut
FILED AT HARTFORD

Nov 29 1974
Sylvester A. Markowski, Clerk

By: [Signature]
Deputy Clerk

JUDGMENT

The Defendants' motion to dismiss in the above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge;

And the Court having filed its Memorandum of Decision on November 27, 1974, treating the motion as one for Summary Judgment, ordering that judgment shall be entered for the defendants on all counts;

It is accordingly ORDERED and ADJUDGED that the Defendants' Motion for Summary Judgment be and is hereby granted for the defendants on all counts.

Dated at Hartford, Connecticut, this 29th day of November, 1974.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: [Signature]
Deputy-in-Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - X

FRANCIS X. CALO,

Plaintiff,

vs.

R. MORRIS PAINE, Chairman
of the Waterbury Parking
Authority, Et Al,

Defendants.

- - - - - X

CIVIL H-74-269

SEPTEMBER 18, 1974
HARTFORD, CONNECTICUT

B E F O R E:

HON. M. JOSEPH BLUMENFELD, U.S.D.J.

EXCERPT

A p p e a r a n c e s:

For the Plaintiff:

RAPHAEL L. PODOLSKY, ESQ.
VICTOR FERRANTE, ESQ.
61 Field Street
Waterbury, Connecticut

For the Defendants:

JOHN PHELAN, ESQ.
Corporation Counsel
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P.O. Box 2299
Waterbury, Connecticut

[App. p.91]

PAUL A. COLLARD
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
450 MAIN STREET
HARTFORD, CONN. 06103



1 THE COURT: In this case of Calo against
2 Paine, and others, counsel have appeared in
3 chambers for the purpose of adopting a plan for
4 presenting the evidence in this case, and the
5 result of that process has been to narrow and
6 define with considerable particularity those
7 issues of fact which are deemed to be of impor-
8 tance for the purpose of getting a correct resolu-
9 tion of the question now before the Court. And
10 that question is whether to issue a temporary
11 injunction.

12 Mechanically, the issues to be resolved was
13 accomplished by taking as the basis of the facts
14 or a statement of the facts what is related in
15 the affidavit of the defendant R. Morris Paine,
16 which I now hand to the Clerk for filing.

17 That affidavit is, in large part, not being
18 controverted as to its factual matter and the
19 particular points at which there is some contro-
20 versy or at least a feeling that some further
21 explanation ought to be made or presented to the
22 Court has been indicated by counsel.

23 So without specifying now what those are, I
24 give counsel for the plaintiff an opportunity to
25 present evidence relating to those specific

1 points in dispute.

2 MR. HEALEY: Your Honor, could the affidavit
3 of the defendant Raymond Giannamore be entered
4 with the same reservations, so that that might get
5 into the record at this time, anyway?

6 THE COURT: Yes. This may be filed.

7 Now, I understood that it is essentially a
8 repetition --

9 MR. HEALEY: That is correct, your Honor.

10 THE COURT: -- or a duplication of what is
11 contained in the affidavit of Mr. Paine.

12 MR. HEALEY: That's correct, your Honor.

13 THE COURT: But for whatever force is gained
14 by the addition of numbers, you are entitled to,
15 and we will have the second affidavit.

16 MR. HEALEY: Also the original of the memo-
17 randum with respect to this preliminary injunction
18 was given to your Honor in chambers and I would
19 like that filed.

20 THE COURT: All right.

21 I may note that a memorandum of law has been
22 filed in behalf of -- well, let's see now. I
23 don't know whether it was in behalf of all
24 defendants, members of the Parking Authority in
25 their individual and official capacity.

1 MR. HEALEY: That's correct, your Honor.

2 THE COURT: This may be marked as filed also.

3 Yes, Mr. Phelan, did you want to speak for
4 the record?

5 MR. PHELAN: Yes, your Honor. May I approach
6 and make a statement for the record in connection
7 with the filing of documents.

8 On behalf of all defendants I would like to
9 file a Motion to Dismiss the complaint. I will
10 state for the record that copies of all these
11 documents that I'm giving to the Clerk and to
12 your Honor have been given to counsel this
13 morning.

14 THE COURT: What is that?

15 MR. PHELAN: This is the motion of all
16 defendants to dismiss the complaint.

17 THE COURT: May be filed.

18 MR. PHELAN: Next is a memorandum of law in
19 support of defendants' Motion to Dismiss the
20 complaint.

21 THE COURT: May be filed.

22 What is next?

23 MR. PHELAN: The affidavit of Mr. Provost,
24 the Personnel Director, and the affidavit of
25 Mayor Mambruno.

[App. p.94]

1 THE COURT: Here is another document, Mr.
2 Clerk, a partial stipulation of facts.

3 MR. PHELAN: Yes. That's a partial stipu-
4 lation entered by counsel for plaintiff and by me
5 in behalf of the Civil Service Commissioners and
6 Personnel Director.

7 MR. PODOLSKY: Your Honor, in regard to the
8 last two affidavits, Mr. Provost and Mr. Mambruno,
9 I just want to state that the issues that they
10 raise in those affidavits are issues that go to
11 the motivation of the defendants and, as we've
12 previously discussed, we are deferring those
13 matters until the hearing on the merits.

14 THE COURT: But they are of record now,
15 anyway.

16 MR. PODOLSKY: Yes.

17 THE COURT: All right.

18 Counsel for the plaintiff want to clarify
19 statements in the affidavit of Mr. Paine on page
20 one with respect to items (d) and (e), to which
21 they have no specific disagreement but wish to
22 point out something about the character of these
23 meetings, the formality of them or something.

24 MR. PODOLSKY: Your Honor, do you wish me
25 to call Mr. Calo for the purpose of testifying
[App. p. 95]

1 on this, or should I just simply state for the
2 record what --

3 THE COURT: Why don't you state for the
4 record. We will see if there is any dispute about
5 it.

6 MR. PODOLSKY: As to paragraphs (d) and (e)
7 on page one, the plaintiff states that there was
8 no formal arrangement that he was to meet with
9 members of the Parking Authority automatically
10 after each Parking Authority meeting, or that he
11 was to meet with the Chairman of the Parking
12 Authority on a daily basis and that there was no
13 arrangement for any kind of either formal or
14 semi-formal meetings.

15 But he does agree that it was indicated to
16 him that the members would be available, as
17 stated in (d) and (e) if he wished to have
18 discussions.

19 So it is only as to any implication that
20 these were formally scheduled and formally
21 arranged meetings.

22 THE COURT: All right. That takes care of
23 throwing additional light on (d) and (e).

24 MR. HEALEY: Your Honor, there's no problem
25 on (e) with respect to what plaintiff's counsel
[App. p.96]

1 has stated.

2 We didn't indicate and we didn't mean to
3 indicate that the plaintiff was to meet with the
4 Chairman each day at 1:30; only that the Chairman
5 would be available to him.

6 THE COURT: Available, right.

7 MR. HEALEY: So there is no problem with (e).

8 THE COURT: Then we get to page two and you
9 want to introduce a more specific time frame for
10 the sessions after the meetings at which there was
11 a review - either before or after the meetings,
12 at which there was a review with Mr. Calo of
13 incidents in connection with his work at the
14 Parking Authority.

15 Is that right?

16 MR. PODOLSKY: That's right.

17 THE COURT: And you say that these sessions
18 to review incidents or discuss incidents first
19 began on May 2nd, is that right?

20 MR. PODOLSKY: No.

21 I'm sorry. After checking the dates of the
22 meetings, your Honor - the meetings after which
23 such sessions took place - according to the
24 plaintiff, were May 16th, May 30th and June 13th.

25 THE COURT: May 15th?
[App. p. 47]

1 MR. PODOLSKY: May 16th, May 30th and June
2 13th.

3 MR. HEALEY: With respect to that, your
4 Honor, it should be stated that we have checked
5 it out and there were, in fact, three meetings in
6 May. They meet every two weeks and not twice a
7 month, as I had indicated.

8 THE COURT: All right.

9 Well, at that point on May 16th, that was
10 how long after the plaintiff had first undertaken
11 his duties at this job?

12 MR. PODOLSKY: Approximately two months.
13 March 11th was the date that he began to perform
14 duties.

15 THE COURT: All right.

16 Now there is a reference in that, on page
17 two, to the fact that, "Many incidents arose
18 which were reviewed with the plaintiff and I
19 can specifically recall at least ten such
20 incidents...", I'm reading from the affidavit.

21 Is there some disagreement as to the number
22 of incidents which were reviewed with the plain-
23 tiff?

24 MR. PODOLSKY: The plaintiff agrees that
25 there were some incidents that were reviewed with

1 him, but denies that there were many.

2 THE COURT: Well, he denied - like saying a
3 car went fast and he denied that he went fast.
4 Now the question is what is that in miles per
5 hour.

6 This affidavit says at least ten. Does he
7 deny that?

8 MR. PODOLSKY: Yes, I believe he denies that
9 there were at least ten.

10 THE COURT: All right. We will have to take
11 evidence on that. That's one thing.

12 During these discussions in chambers a
13 point was raised whether the incidents discussed
14 were the same incidents that supported a letter of
15 recommendation that the plaintiff be discharged.
16 Is that correct?

17 MR. PODOLSKY: The letter of recommendation
18 does not refer to the precise incidents in the
19 sense of naming particular dates, places or times.

20 THE COURT: Yes.

21 MR. PODOLSKY: It refers to, apparently,
22 categories of things.

23 THE COURT: Yes.

24 MR. PODOLSKY: The plaintiff is not certain
25 as to which incidents are incorporated in the

1 letter.

2 THE COURT: Yes.

3 MR. PODOLSKY: He presumes that there is at
4 least some relationship between those and ones
5 discussed, but the plaintiff cannot be any more
6 specific because he does not know. And that is one
7 of his legal claims in the case, as well.

8 THE COURT: All right.

9 Then on page three, beginning with the
10 sentence in the middle of the page, or down about
11 ten lines:

12 "Plaintiff indicated that he had not been
13 informed of the charges against him."

14 And the affidavit says that on Thursday,
15 July 10th, at a meeting at which his lawyer,
16 Attorney Negaro, was present, the Chairman
17 offered to review the charges against him again.

18 MR. PODOLSKY: This is July 2nd, your Honor.

19 THE COURT: Yes, on July 2nd.

20 And his attorney objected to that, indicating
21 he didn't want to go into details, but would
22 prefer to engage in some discussion of a concilia-
23 tion process.

24 Is that a fair statement of the sense of
25 what occurred there?

1 MR. PODOLSKY: I think that the order of
2 events is reversed. That first there was --

3 THE COURT: You mean first the lawyer wanted
4 to see if he could do anything as a conciliatory
5 solution. And when that proved ineffectual is it
6 true that the Chairman said he'd be happy to
7 review the charges against the plaintiff with him
8 again?

9 MR. PODOLSKY: The plaintiff agrees, your
10 Honor, that it might have been possible to have a
11 discussion of charges, although he maintains he
12 had no advance notice at that session.

13 But that he disagrees that Mr. Paine actually
14 started to make any review. He disagrees there
15 was ever any discussion of any specific charges.

16 And as to the last sentence in that para-
17 graph, he states that Attorney Negaro stopped this
18 process not because he did not want to go into
19 details, but because of the informal nature of the
20 session he did not consider it the appropriate
21 place to go into any further details.

22 THE COURT: Does that fairly reflect what
23 occurred, Mr. Healey?

24 MR. HEALEY: It's my understanding that
25

1 was provided to hear the specific incidents
2 that were involved -- the opportunity was provided,
3 but that the plaintiff's counsel did not want to
4 hear at that time.

5 THE COURT: Because of the informal nature
6 of the session.

7 MR. HEALEY: Because of the informal nature
8 of the session.

9 THE COURT: Right?

10 MR. PODOLSKY: Right. And lack of events.

11 I think that the plaintiff will have to
12 provide some supplementary testimony on that
13 point, your Honor.

14 THE COURT: All right.

15 Now we get to the meeting of the 5th, is
16 that right, the special meeting for the express
17 purpose of taking formal action? And the point
18 which needs clarification is that Mr. Krug was
19 not present until after the Commission voted. Is
20 that right?

21 MR. PODOLSKY: That's correct. I believe
22 that is agreed.

23 MR. HEALEY: That is agreed, your Honor.

24 The minutes properly reflect the sequence of
25 events and they do indicate that the vote was

1 taken prior to the arrival of Mr. Krug.

2 I don't think there is any allegation that
3 we were asked to delay for Mr. Krug.

4 THE COURT: All right.

5 Then the motives are not relevant.

6 Then we get to page four and that period of
7 time relates to the period prior to July 5, right?

8 Is that correct?

9 MR. PODOLSKY: I think that Mr. Healey
10 indicated that --

11 MR. HEALEY: As far as the defendant Parking
12 Authority is concerned it is our claim that at no
13 time did we either directly or indirectly give
14 publicity to these events. That any publicity
15 that came came as a result of the fact that the
16 July 5th meeting was, in fact, a public meeting
17 and there was a reporter present.

18 THE COURT: Do you have any difference?

19 MR. PODOLSKY: No, I think there is no
20 substantial disagreement as to that.

21 The plaintiff does not know precisely what
22 the Parking Authority may or may not have done
23 and does not disagree.

24 THE COURT: All right.

25 Now, have I set it out all right?

1 MR. PODOLSKY: The one other point that I
2 wanted to mention was in the second paragraph on
3 page four, as I stated in chambers, that the
4 plaintiff requested that the charges against him
5 be made known to him, and that is what he meant by
6 any request that the charges be made public.

7 He did not request the charges be published
8 in the newspaper or anything equivalent to that.

9 THE COURT: Yes. All right.

10 He didn't request it to be made public; he
11 requested that they be made of record. Is that
12 it?

13 MR. PODOLSKY: It be made of record.

14 He made that request on several occasions,
15 including at the public meeting of July 5th.

16 THE COURT: I understand. And a reporter
17 was there so that's how the reporter got it. And
18 that's how the public got it.

19 Now, do you want to put your client on, and
20 as to what?

21 MR. PODOLSKY: It appears, your Honor, that
22 it would be necessary to make several inquiries
23 regarding the meetings of June 27th, July 2nd
24 and July 5th, because I would like to establish
25 what requests Mr. Calo made in the way of notice

1 of charges and things of that sort.

2 Also as to the earlier sessions, we
3 indicated that there is some factual disagreement
4 as to how frequently they occurred or what the
5 subject matter was. And I think it is probably
6 necessary to ask Mr. Calo a few questions in that
7 regard.

8 THE COURT: Put him on. Let's get under way.

9 * * *

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF CONNECTICUT

3 - - - - - X
4 FRANCIS X. CALO :

5 vs. :

CIVIL H-74-269

6 R. MORRIS PAINE, Chairman of the
7 Waterbury Parking Authority, :
Et Al :

8 - - - - - X
9 COURT REPORTER'S TRANSCRIPT CERTIFICATE

10
11 I hereby certify that the within and
12 foregoing is a true and correct transcript of an
13 excerpt taken from my original stenographic notes of
14 the proceedings held on September 18, 1974, in the
15 United States District Court, for the District of
16 Connecticut, at Hartford, before Honorable M. Joseph
17 Blumenfeld, U.S.D.J.

18
19
20 DATED: MARCH 4, 1975.

Official Court Reporter